

royalties, and real property rentals to the extent such item or items are included in his share of the distributed or distributable income of such estate or trust. In order to be entitled in such instance to the exemption from, or reduction in the rate of, tax such beneficiary must otherwise satisfy the requirements of these respective Articles of the convention and must, where applicable, execute and submit to the fiduciary of such estate or trust in the United States the appropriate letter of notification prescribed in §§513.3(b), 513.4, and 513.5.

**§513.11 Refund of income tax withheld during 1951.**

(a) If United States tax withheld at the source during the year 1951 from dividends, interest, royalties, natural resource royalties, real property rentals, pensions, or life annuities is in excess of the tax imposed by Chapter 1 (relating to the income tax) of the Internal Revenue Code, as modified by the convention, claim by the taxpayer for the refund of any overpayment shall be made under section 322 of the Internal Revenue Code by filing Form 843 together with Form 1040NB, Form 1040NB-a, Form 1040B, or Form 1120NB, whichever is applicable, or with an amended return.

(b) The taxpayer's total gross income from sources within the United States, including every item of capital gain subject to tax under the provisions of section 211(a)(1)(B) or 211(c) of the Internal Revenue Code, shall be disclosed on the return. In the event that securities are held in the name of a person other than the actual or beneficial owner, the name and address of such person must be furnished with the claim. There shall also be included in such claim for refund a statement:

(1) That the taxpayer was, at the time when the item or items of income were derived, (i) a nonresident alien (including a nonresident alien individual, fiduciary, or partnership) who at such time was resident in Ireland for the purposes of Irish tax, or (ii) a foreign corporation whose business at such time was managed and controlled in Ireland.

(2) That the taxpayer at no time during the taxable year in which the in-

come was derived had a permanent establishment in the United States.

(3) That the taxpayer is subject to Irish tax on the item or items of income for which the benefit of the convention is claimed.

(c) If, however, the taxpayer is an individual who during the taxable year derived from sources within the United States income which consists exclusively of pensions or life annuities entitled to the benefit of Article XII of the convention, the statements specified in paragraph (b) (2) and (3) of this section will not be required.

(d) As to additional information required in the case of a foreign corporation claiming the benefit of the 5 percent rate on dividends, or in certain doubtful cases the benefit of the exemption with respect to interest, paid by a domestic corporation, see §513.2(b) or §513.3(c).

## PART 514—FRANCE

### Subpart—Withholding of Tax

TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1956, AND BEFORE JANUARY 1, 1967, OR DIVIDENDS, INTEREST, AND ROYALTIES PAID BEFORE AUGUST 11, 1968

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AUTHORITY: 26 U.S.C. 7805.

### Subpart—Withholding of Tax

TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1956, AND BEFORE JANUARY 1, 1967, OR DIVIDENDS, INTEREST, AND ROYALTIES PAID BEFORE AUGUST 11, 1968

## 26 CFR Ch. I (4-1-98 Edition)

SOURCE: Treasury Decision 6273, 22 FR 9530, Nov. 28, 1957; 25 FR 14022, Dec. 31, 1960, unless otherwise noted.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53498, Oct. 14, 1997, the undesignated centerheading preceding § 514.1 was removed, effective Jan. 1, 1999.

### § 514.1 Introductory.

(a) *Applicable provisions of convention.* The income tax convention between the United States and France, signed on July 25, 1939, and October 18, 1946, as modified by the supplemental convention, signed June 22, 1956 (the instruments of ratification of which were exchanged on June 13, 1957), referred to in this part as the convention, provides in part as follows, the quoted articles being effective as indicated:

Article I(a) of the Supplemental Convention of 1956, on June 13, 1957.

Article I(d) of the Supplemental Convention of 1956, on January 1, 1952.

Article 7 and the Protocol of the Convention of 1939, on January 1, 1945.

The supplemental convention signed June 22, 1956, provides in part as follows:

#### ARTICLE I

The provisions of the Convention and Protocol between the United States and the French Republic signed at Paris on July 25, 1939 are hereby modified and supplemented as follows:

(a) By striking out Article 1(a) and inserting in lieu thereof the following:

“(a) In the case of the United States: The Federal income taxes (including surtaxes and excess profits taxes) and the documentary taxes on sales or transfers of shares or certificates of stock or bonds.”

\* \* \* \* \*

(d) By adding immediately after Article 6 the following new articles:

#### “ARTICLE 6A

Dividends and interest derived, on or after January 1, 1952, from sources within one of

the contracting States by a resident or corporation or other entity of the other State, not having a permanent establishment in the former State shall be subject to tax by such former State at a rate not in excess of 15 percent of the gross amount of such dividends or interest. Such reduced rate of tax shall not apply to dividends or interest paid prior to the calendar year in which are exchanged the instruments of ratification of the present Convention if, for the taxable year in which such dividends or interest is received, penalty for fraud with respect to the taxes which are the subject of the present Convention has been imposed against the recipient of such dividends or interest."

\* \* \* \* \*

#### ARTICLE III

(a) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Paris as soon as possible.

(b) Its provisions shall come into force and shall become effective as of the date of the exchange of the instruments of ratification subject both to the provisions of Article I (d) and (e) and to the provisions set forth herein below.

\* \* \* \* \*

(c) If refund of any overpayment resulting from the application of Article I(d) of the present Convention is prevented on the date of exchange of instruments of ratification or within two years from such date by the operation of any law, refund of such overpayment (without interest) shall nevertheless be made provided that claim for refund is filed within two years after the date of the exchange of instruments of ratification of the present Convention with the contracting State to which such overpayment was made.

(d) The present Convention shall remain effective so long as the Conventions signed July 25, 1939 and October 18, 1946, remain effective.

The convention of July 25, 1939, provides, in part, as follows:

#### ARTICLE 7

\* \* \* \* \*

Royalties derived from within one of the contracting States by a resident, or by a corporation or other entity of the other contracting State as consideration for the right to use copyrights, patents, secret processes and formulae, trademarks and other analogous rights shall be exempt from taxation in the former State, provided such resident, corporation or other entity does not have a permanent establishment there.

#### ARTICLE 8

\* \* \* \* \*

Private pensions and life annuities derived from within one of the contracting States and paid to individuals residing in the other contracting State shall be exempt from taxation in the former State.

Protocol:

\* \* \* \* \*

III. As used in this Convention:

(a) The term "permanent establishment" includes branches, mines and oil wells, plantations, factories, workshops, stores, purchasing and selling and other offices, agencies, warehouses, and other fixed places of business but does not include a subsidiary corporation.

When an enterprise of one of the contracting States carries on business in the other State through an employee or agent, established there, who has general authority to negotiate and conclude contracts or has a stock of merchandise from which he regularly fills orders which he receives, this enterprise shall be deemed to have a permanent establishment in the latter State. But the fact that an enterprise of one of the contracting States has business dealings in the other State through a bona fide commission agent or broker shall not be held to mean that such enterprise has a permanent establishment in the latter State.

Insurance enterprises shall be considered as having a permanent establishment in one of the States as soon as they receive premiums from or insure risks in the territory of that State.

IV. The term "life annuities" referred to in Article 8 of this Convention means a stated sum payable periodically at stated times during life, or during a specified number of years to the person who has paid the premium or a gross sum for such an obligation.

The convention of October 18, 1946, provides, in part, as follows:

#### TITLE III

##### *Administrative Assistance*

\* \* \* \* \*

#### ARTICLE 13

(1) The competent authorities of the two Contracting States may prescribe regulations necessary to interpret and carry out the provisions of the present Convention and the Convention of July 25, 1939.

\* \* \* \* \*

## § 514.2

## 26 CFR Ch. I (4-1-98 Edition)

(b) *Definitions*—(1) *In general.* Any term defined in the convention or §§ 514.1 to 514.10 shall have the meaning so assigned to it; any term not so defined shall, unless the context otherwise requires, have the meaning which such term has under the internal revenue laws of the United States.

(2) *France.* As used in §§ 514.1 to 514.10, the term “France”, when used in a geographical sense, means continental France, exclusive of Algeria and the Colonies.

### § 514.2 Dividends.

(a) *General.* (1) The rate of United States tax imposed by the Internal Revenue Code upon dividends derived from sources within the United States on or after January 1, 1952, by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of France when such dividend is so paid, or by a French corporation, shall not exceed 15 percent if such alien or corporation at no time during the taxable year in which such dividends are so received has no permanent establishment within the United States. Article I(a) of the convention, signed June 22, 1956. As to what constitutes a “permanent establishment” see Protocol III(a), in § 514.1.

(2) Thus, if a nonresident alien individual who is a resident of France performs personal services within the United States during the taxable year but has at no time during such year a permanent establishment within the United States, he is entitled to the reduced rate of tax with respect to dividends derived from United States sources, as provided in Article I(d) of the convention even though under the provisions of section 871(c) of the Internal Revenue Code of 1954 he has engaged in trade or business within the United States during such year by reason of his having rendered personal services therein.

(b) *Effect of address in France on withholding in the case of dividends.* For the purpose of withholding of United States tax in the case of dividends, every nonresident alien (including a nonresident alien individual, fiduciary, and partnership) whose address is in France shall be deemed by United States withholding agents to be a non-

resident alien who is a resident of France not having a permanent establishment in the United States; and every foreign corporation whose address is in France shall be deemed by such withholding agents to be a French corporation not having a permanent establishment in the United States.

(c) *Rate of withholding.* (1) Withholding at source in the case of dividends derived from sources within the United States and paid on or after January 1, 1957, to nonresident aliens (including a nonresident alien individual, fiduciary, and partnership) and to foreign corporations, whose addresses are in France, shall be at the rate of 15 percent in every case except that in which, prior to the date of payment of such dividends, the Commissioner of Internal Revenue has notified the withholding agent that the reduced rate of withholding shall not apply.

(2) The preceding provisions respecting the application of the reduced withholding rate in the case of dividends paid to nonresident aliens and foreign corporations with addresses in France are based upon the assumption that the payee of the dividend is the actual owner of the capital stock from which the dividend is derived and consequently is the person liable to the United States upon such dividend. As to action by the recipient who is not the owner of the dividend, see § 514.3.

(3) The rate at which the United States tax has been withheld from any dividend paid at any time after the expiration of the thirtieth day after the date on which §§ 514.1 to 514.10 are published in the FEDERAL REGISTER to any person whose address is in France at the time the dividend is paid shall be shown either in writing or by appropriate stamp on the check, draft, or other evidence of payment or on an accompanying statement.

### § 514.3 Dividends received by addressee not actual owner.

(a) *Additional tax to be withheld*—(1) *Nominee or representative.* The recipient in France of any dividend, paid on or after January 1, 1957, from which United States tax at the reduced rate of 15 percent has been withheld at source pursuant to § 514.2(c)(1), who is a nominee or representative through

whom the dividend is received by a person other than one described in § 514.2(a) as being entitled to the reduced rate, shall withhold an additional amount of United States tax equivalent to the United States tax which would have been withheld if the convention had not been in effect (30 percent as of the date of approval of §§ 514.1 to 514.10) minus the 15 percent which has been withheld at the source.

(2) *Fiduciary or partnership.* A fiduciary or a partnership with an address in France which receives, otherwise than as a nominee or representative, a dividend from which United States tax at the reduced rate of 15 percent has been withheld at source pursuant to § 514.2 shall withhold an additional amount of United States tax from the portion of the dividend included in the gross income from sources within the United States of any beneficiary or partner, as the case may be, who is not entitled to the reduced rate of tax in accordance with § 514.2(c). The amount of the additional tax is to be calculated in the same manner as under subparagraph (1) of this paragraph.

(3) *Released amounts of tax.* If any amount of United States tax is released pursuant to § 514.8(a)(1) by the withholding agent in the United States with respect to a dividend paid to a nominee, representative, fiduciary, or partnership with an address in France, the latter shall withhold from such released amount any additional amount of United States tax, otherwise required to be withheld from the dividend by the provisions of subparagraphs (1) and (2) of this paragraph, in the same manner as if at the time of payment of the dividends United States tax at the rate of only 15 percent had been withheld at source therefrom.

(b) *Returns filed by French withholding agents.* The amounts withheld pursuant to paragraph (a) of this section by any withholding agent in France shall be deposited, without converting the amounts into United States dollars, with the Directeur General des Impôts of France on or before the 15th day after the close of the quarter of the calendar year in which the withholding in France occurs. The withholding agent making the deposit shall render therewith such appropriate French form as

may be prescribed by the Directeur General des Impôts. The amounts so deposited should be remitted by the Directeur General des Impôts by draft in the United States dollars to the Director, International Operations Division, Internal Revenue Service, Washington 25, D. C., U. S. A., on or before the end of the calendar month in which the deposit is made, and should be accompanied by such French form as may be required to be rendered by the withholding agent in France in connection with the deposit.

#### § 514.4 Interest.

(a) *General.* The rate of United States tax imposed by the Internal Revenue Code upon interest on bonds, securities, notes, debentures, or on any other form of indebtedness, including interest on obligations of the United States, obligations of instrumentalities of the United States, and mortgages and bonds secured by real property, which is derived from sources within the United States in taxable years beginning on or after January 1, 1952, by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of France, or by a French corporation or other entity, shall not exceed 15 percent under the provisions of Article I(d) of the convention if such alien, corporation, or other French entity at no time during the taxable year in which such interest is received has a permanent establishment in the United States. As to what constitutes a permanent establishment see Article III(a) of the convention.

(b) *Application of reduced rate at source.* (1) To secure withholding of United States tax at the rate of 15 percent at source in the case of coupon bond interest, the nonresident alien who is a resident of France, or the French corporation or other entity, shall, for each issue of bonds, file Form 1001-F in duplicate when presenting the interest coupons for payment. This form shall be signed by the owner of the interest, or by his trustee or agent, and shall show the name and address of the obligor, the name and address of the owner of the interest, and the amount of the interest. It shall contain

a statement that the owner (i) is a resident of France, or is a French corporation or other entity, and (ii) has no permanent establishment in the United States.

(2) The reduction in the rate of United States tax contemplated by Article 6A of the convention, insofar as it concerns coupon bond interest, is applicable only to the owner of the interest. The person presenting the coupon or on whose behalf it is presented shall, for the purpose of the reduction in tax, be deemed to be the owner of the interest only if he is, at the time the coupon is presented for payment, the owner of the bond from which the coupon has been detached. If the person presenting the coupon, or on whose behalf it is presented, is not the owner of the bond, Form 1001, and not Form 1001-F, shall be executed.

(3) The original and duplicate of Form 1001-F shall be forwarded by the withholding agent to the Director, International Operations Division, Internal Revenue Service, Washington 25, D. C., with the annual return on Form 1042. Form 1001-F shall be listed on Form 1042.

(4) To secure the reduced rate of United States tax at source in the case of interest other than coupon bond interest, the nonresident alien individual who is a resident of France, or the French corporation or other entity, shall file Form 1001A-F in duplicate with the withholding agent in the United States. This form shall be signed by the owner of the interest, or by his trustee or agent, and shall show the name and address of the obligor and the name and address of the owner of the interest. It shall contain a statement that the owner (i) is a resident of France, or is a French corporation or other entity, and (ii) has no permanent establishment in the United States.

(5) Form 1001A-F shall be filed with the withholding agent for each successive three-calendar-year period during which such interest is paid. For this purpose, the first such period shall commence with the beginning of the calendar year in which such income is first paid on or after January 1, 1957. Each such form filed with any withholding agent shall be filed not later than 20 days preceding the date of the

first payment within each successive period, or, if that is not possible because of special circumstances, as soon as possible after such first payment. Once such a form has been filed in respect of any three-calendar-year period, no additional Form 1001A-F need be filed in respect thereto unless the Commissioner of Internal Revenue notifies the withholding agent that another such form shall be filed by the taxpayer. If, after filing such form, the taxpayer ceases to be eligible for the reduced rate of United States tax granted by Article 6A of the convention in respect to such interest, he shall promptly notify the withholding agent by letter in duplicate. When any change occurs in the ownership of the interest as recorded on the books of the payer, the reduction in rate of withholding of United States tax shall no longer apply unless the new owner of record is entitled to and does properly file a Form 1001A-F with the withholding agent.

(6) The duplicate of each Form 1001A-F shall be immediately forwarded by the withholding agent to the Director, International Operations Division, Internal Revenue Service, Washington 25, D. C.

#### **§ 514.5 Patent and copyright royalties and film rentals.**

(a) *Exemption from tax.* Royalties for the right to use copyrights, patents, designs, secret processes and formulae, trademarks, and other analogous property, and royalties and rentals in respect of motion picture films or for the use of industrial, commercial, or scientific equipment, which are derived from sources within the United States on or after January 1, 1945, by a nonresident alien individual who is a resident of France, or by a French corporation, are exempt from United States tax under the provisions of Article 7 of the convention signed July 25, 1939, as modified by Article 7(b) of the convention signed October 18, 1946, if such alien or corporation at no time during the taxable year in which such income is derived has engaged in trade or business within the United States through a permanent establishment situated therein.

(b) *Exemption from withholding of United States tax.* To avoid withholding of United States tax at source in the case of items of income to which this section applies, the nonresident alien who is a resident of France, or the French corporation, shall file Form 1001A-F, in duplicate, with the withholding agent in the United States.

(c) *Manner of filing.* The provisions of § 514.4 relating to the execution, filing, effective period, and disposition of Form 1001A-F, are equally applicable with respect to the income falling within the scope of this section.

(d) *Revocation of 26 CFR (1939) 7.418 (Treasury Decision 5499).* Effective January 1, 1957, the provisions of 26 CFR 7.418 (Rev. 1953, Parts 1-79, and Supps.) (Treasury Decision 5499, 11 F.R. 2158), approved February 27, 1946, are hereby made inapplicable, and the provisions of this section are hereby substituted therefor with respect to payments of royalties and film rentals made on or after January 1, 1957.

#### **§ 514.6 Private pensions and life annuities.**

(a) *Exemption from tax.* Private pensions and life annuities as defined in paragraph (d) of this section, derived from sources within the United States on or after January 1, 1945, and paid to a nonresident alien who is a resident of France are exempt from United States tax under the provisions of Article 8 of the convention of July 25, 1939.

(b) *Exemption from withholding of United States tax—Form to use.* To secure exemption from withholding of United States tax at the source in the case of private pensions and life annuities, the nonresident alien who is a resident of France shall file Form 1001A-F, in duplicate, with the withholding agent in the United States.

(c) *Manner of filing.* The provisions of § 514.4 relating to the execution, filing, effective period, and disposal of Form 1001A-F are equally applicable with respect to the income falling within the scope of this section.

(d) *Definition.* As used in this section, the term “pensions” means periodic payments made in consideration for services rendered or by way of compensation for injuries received, and the term “life annuities” means a stated

sum payable periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration in money or money's worth. Neither term includes retired pay or pensions paid by the United States or by any State or Territory of the United States.

#### **§ 514.7 Beneficiaries of a domestic estate or trust.**

(a) *Entitled to benefits of convention.* If he otherwise satisfies the requirements of the respective articles concerned, a nonresident alien individual who is a resident of France and who is a beneficiary of a domestic estate or trust shall be entitled to the reduction in the rate of, or exemption from, United States tax granted by Articles 6A and 7 of the convention with respect to dividends, interest, and patent royalties and other like amounts to the extent that (1) any amount paid, credited, or required to be distributed by such estate or trust to such beneficiary is deemed to consist of such items, and (2) such items would, without regard to the convention, be includible in his gross income.

(b) *Withholding of United States tax.* In order to be entitled, because of the application of paragraph (a) of this section, to the reduction in rate of, or exemption from, withholding of United States tax the beneficiary must otherwise satisfy the requirements of the respective articles concerned, and shall, where applicable, execute and submit to the fiduciary of the estate or trust in the United States the appropriate form or forms prescribed in §§ 514.4(b) and 514.6(b).

(c) *Amounts otherwise includible in gross income of beneficiary.* For the determination of amounts which, without regard to the convention, are includible in the gross income of the beneficiary, see subchapter J of chapter 1 of the Internal Revenue Code of 1954, and the regulations thereunder.

#### **§ 514.8 Release of excess tax withheld at source.**

(a) *Amounts to be released—(1) Dividends derived from domestic corporation.* If United States tax has been withheld

at the statutory rate on or after January 1, 1957, from dividends described in § 514.2(a) and derived from a domestic corporation by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) or by a foreign corporation, whose address at the time of payment was in France, the withholding agent shall release and pay over to the person from whom the tax was withheld an amount which is equal to the difference between the tax so withheld and the tax required to be withheld pursuant to § 514.2(c).

(2) *Coupon bond interest*—(i) *Substitute form*. In the case of every taxpayer who furnishes to the withholding agent Form 1001-F clearly marked “Substitute” and executed in accordance with § 514.4(b)(1), where United States tax has been withheld at the statutory rate on or after January 1, 1957, from coupon bond interest, the withholding agent shall release and pay over to the person from whom the tax was withheld an amount which is equal to the difference between the tax so withheld and the tax required to be withheld pursuant to § 514.4(b)(1) if the taxpayer also attaches to such form a letter in duplicate, signed by the owner, trustee, or agent and containing the following:

(a) The name and address of the obligor;

(b) The name and address of the owner from which the excess tax was withheld;

(c) A statement that, at the time when the interest was derived from which the excess tax was withheld, the owner was neither a citizen nor a resident of the United States but was a resident of France, or, in the case of a corporation, the owner was a French corporation; and

(d) A statement that the owner at no time during the taxable year in which the interest was derived was engaged in trade or business within the United States through a permanent establishment situated therein.

One such substitute form shall be filed, in duplicate, with respect to each issue of bonds and will serve with respect to that issue to replace all Forms 1001 previously filed by the taxpayer in the calendar year in which the excess tax was withheld and with respect to which such excess is released. If the person

presenting the coupon, or on whose behalf it is presented, is not the owner of the bond, Form 1001, and not Form 1001-F, shall be executed.

(ii) *Disposition of form*. The original and duplicate of substitute Form 1001-F (and letter) shall be forwarded by the withholding agent to the Director, International Operations Division, Internal Revenue Service, Washington, D.C., with the annual return on Form 1042. Substitute Form 1001-F need not be listed on Form 1042.

(3) *Noncoupon interest, royalties, private pensions, and life annuities*. (i) If a taxpayer furnishes to the withholding agent a Form 1001A-F, properly executed as prescribed by § 514.4(b)(4), and United States tax has been withheld at the statutory rate on or after January 1, 1957, from noncoupon interest payments in respect of which the form is filed, the withholding agent should release and pay over to the person from whom the tax was withheld an amount which is equal to the difference between the tax so withheld and the tax required to be withheld pursuant to § 514.4(b)(4).

(ii) If a taxpayer furnishes to the withholding agent a Form 1001A-F, properly executed as prescribed by § 514.4(b)(4), and United States tax has been withheld at the statutory rate on or after January 1, 1957, from royalties, private pensions, and life annuities in respect of which the form is filed, the withholding agent shall release and pay over to the person from whom the tax was withheld an amount which is equal to the total tax so withheld.

(b) *Amounts not to be released*. The provisions of this section do not apply to excess tax withheld at source which has been paid by the withholding agent to the internal revenue officer entitled to receive payment of the tax withheld under chapter 3 of the Internal Revenue Code of 1954.

(c) *Statutory rate*. As used in this section, the term “statutory rate” means the rate prescribed by chapter 3 of the Internal Revenue Code of 1954 and the regulations thereunder, as though the convention had not come into effect.

#### § 514.9 Refund of excess tax withheld.

(a) *Years 1952, 1953, 1954, 1955, 1956*. Where the tax withheld at the source



upon dividends and interest paid in any one or more of the calendar years 1952, 1953, 1954, 1955, and 1956 is in excess of the tax due from the taxpayer under the convention, supplemented as set forth above, it will be necessary for the taxpayer to file an income tax return (Form 1040NB France for individuals and Form 1120NB France for corporations) with respect to such taxable year or years. The return shall cover all years for which a refund is claimed. The return must be filed on or before June 13, 1959. One return shall cover all years for which a refund is claimed. The taxpayer's total fixed or determinable, annual or periodical income (other than royalties) from sources within the United States should be reported on the return, and the income for each taxable year should be shown separately. There shall also be shown on such returns the amounts, if any, received in any of such years of capital gains (other than gains from the sale or exchange of stocks, securities or commodities) from sources within the United States. For this purpose, beginning with the calendar year 1954, certain distributions from employees' trusts, and amounts received incident to disposal of timber or coal or patent rights shall be included in such capital gains. See section 871(a)(1) of the Internal Revenue Code of 1954 for provisions pertaining to individual taxpayers and section 881(a) for provisions pertinent to corporate taxpayers. There shall be included with the return the following statements:

(1) That the taxpayer was a non-resident alien (including a nonresident alien individual, fiduciary, or partnership) resident in France or was a French corporation, during the year or years for which the return is filed;

(2) That the taxpayer had no permanent establishment in the United States during the respective years in which the income was received;

(3) That no penalty for fraud has been imposed by the United States against the taxpayer claimant with respect to income tax for the year or years for which the return is filed.

In addition to the above statements, all information requested on the return must be furnished. Any tax paid in excess of that due from the owner of the

income will be refunded by the United States Government as required by law. For the purpose of refund of excess tax withheld resulting from the tax convention, a properly executed return on Form 1040NB France or Form 1120NB France shall constitute a claim for refund or credit for the amount of the overpayment disclosed by such return.

(b) *Date of payment of tax.* The United States tax withheld from dividends and interest derived from sources within the United States by nonresident aliens, or by a foreign corporation not engaged in trade or business in the United States, is deemed to have been paid on March 15 of the calendar year immediately succeeding that in which such income has been so derived. Section 1461, Internal Revenue Code of 1954. Hence, the United States tax withheld from dividends and interest derived by such aliens resident in France and such French corporations for the years 1952, 1953, 1954, 1955, and 1956 is deemed to have been paid, respectively, on March 15, 1953, March 15, 1954, March 15, 1955, March 15, 1956, and March 15, 1957.

#### § 514.10 Effective date.

The provisions of §§ 514.1 through 517.9 shall be effective with respect to taxable years beginning after December 31, 1956, and before January 1, 1967, or with respect to dividends, interest, and royalties paid before August 11, 1968.

[T.D. 6986, 34 FR 136, Jan. 4, 1969]

TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1966, OR DIVIDENDS, INTEREST, AND ROYALTIES PAID ON OR AFTER AUGUST 11, 1968

SOURCE: Treasury Decision 6986, 34 FR 136, Jan. 4, 1969, unless otherwise noted.

#### § 514.20 Introductory.

(a) *Applicable provisions of convention.* The income tax convention between the United States and France, signed on July 28, 1967 (the instruments of ratification of which were exchanged on July 11, 1968), provides in part as follows, effective for taxable years beginning after December 31, 1966, or with respect to the rate of withholding tax,

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for dividends, interest, and royalties paid on or after August 11, 1968:

ARTICLE 1—TAXES COVERED

(1) The taxes which are the subject of the present Convention are:

(a) In the case of the United States, the Federal income tax, including surtax, imposed by the Internal Revenue Code and

(b) In the case of France:

(i) The income tax on the income of physical persons, the complementary tax, the corporation tax, including any withholding tax, prepayment (precompte) or advance payment with respect to the aforesaid taxes, and

(ii) The tax on Stock Exchange transactions.

(2) The Convention shall also apply to any documentary taxes on sales or transfers of shares or certificates of stock or bonds which are subsequently imposed.

(3) The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.

(4) For the purpose of Article 24 (Non-discrimination), this Convention shall also apply to taxes of every kind and to those imposed at the national, State, and local level.

ARTICLE 2—GENERAL DEFINITIONS

(1) In this Convention, unless the context otherwise requires:

(a) The term “United States of America” means the United States of America and when used in the geographical sense means the States thereof and the District of Columbia. The term “France” when used in a geographical sense means Metropolitan France and the Overseas departments (Guadeloupe, Guyane, Martinique, and Reunion).

(b) The terms “a Contracting State” and “the other Contracting State” means the United States or France, as the context requires.

(c) The term “person” comprises an individual or a corporation, or any other body of individuals or persons.

(d)(i) The term “United States corporation” or “corporation of the United States” means a corporation, or any entity treated as a corporation for U.S. tax purposes, which is created or organized under the laws of the United States or any State thereof or the District of Columbia; and

(ii) The term “French corporation” or “corporation of France” means any body corporate or any entity which is treated as a body corporate under French tax law, which is resident within France for French tax purposes.

(e) The term “competent authority” means:

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(i) In the case of the United States, the Secretary of the Treasury or his delegate, and

(ii) In the case of France, the Minister of Economy and Finance or his delegate.

(2) As regards the application of the Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Convention.

ARTICLE 3—FISCAL DOMICILE

(1) The term “resident of France” means:

(a) A French corporation, and

(b) Any person (other than a body corporate or any entity which under French law is treated as a body corporate) who is resident in France for purposes of its tax.

(2) The term “resident of the United States” means:

(a) A U.S. corporation, and

(b) Any person (other than a corporation or an entity treated under U.S. law as a corporation) who is resident in the United States for purposes of its tax, but in the case of a person acting as a partner or fiduciary only to the extent that the income derived by such person in that capacity is taxed as the income of a resident.

(3) An individual who is a resident in both Contracting States shall be deemed a resident of that Contracting State in which he maintains his permanent home. If he has a permanent home in both Contracting States or in neither of the Contracting States, he shall be deemed a resident of that Contracting State with which his personal and economic relations are closest (center of vital interests). If the Contracting State in which he has his center of vital interests cannot be determined, he shall be deemed a resident of that Contracting State in which he has an habitual abode. If he has an habitual abode in both Contracting States or in neither of the Contracting States, the competent authorities of the Contracting States shall settle the question by mutual agreement. For purposes of this Article, a permanent home is the place in which an individual dwells with his family. An individual who is deemed to be a resident of one Contracting State and not a resident of the other Contracting State by reason of the provisions of this paragraph shall be deemed a resident only of the former State for all purposes of this Convention (including Article 22).

ARTICLE 4—PERMANENT ESTABLISHMENT

(1) For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which a resident of one of the Contracting States engaged in industrial or commercial activity.

(2) The term “permanent establishment” shall include especially:

- (a) A seat of management;
- (b) A branch;
- (c) An office;
- (d) A factory;
- (e) A workshop;
- (f) A warehouse;
- (g) A mine, quarry, or other place of extraction of natural resources;
- (h) A building site or construction or assembly project which exists for more than 12 months.

(3) Notwithstanding paragraph (1) of this Article, a permanent establishment shall not include a fixed place of business used only for one or more of the following activities:

- (a) The use of facilities for the purpose of storage, display, or delivery of goods or merchandise belonging to the resident;
- (b) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of storage, display, or delivery;
- (c) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of processing by another person;
- (d) The maintenance of a fixed place of business for the purpose of purchasing goods or merchandise, or for collecting information, for the resident;
- (e) The maintenance of a fixed place of business for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the resident.

(4) A person acting in a Contracting State on behalf of a resident of the other Contracting State—other than an agent of an independent status to whom paragraph (5) applies—shall be deemed to be a permanent establishment in the first-mentioned State if such person:

(a) Has, and habitually exercises in that State, an authority to conclude contracts in the name of that resident, unless the exercise of such authority is limited to the purchase of goods or merchandise for that resident, or

(b) Maintains substantial equipment or machinery within the first-mentioned State for a period of 12 months or more.

(5) A resident of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because such resident carries on business in that other State through a broker, general commission agent, or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

(6) The fact that a resident of one of the Contracting States is a related person, as defined in Article 8 of this Convention, with respect to a resident of the other Contracting State or with respect to a person which engages in industrial or commercial activity in

that other Contracting State (whether through a permanent establishment or otherwise) shall not be taken into account in determining whether that resident of the first Contracting State has a permanent establishment in the other Contracting State.

(7) An insurance company of one of the Contracting States shall be considered as having a permanent establishment in the other Contracting State if, through a representative other than one described in paragraph (5), such company receives premiums from or insures risks in the territory of that other Contracting State.

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#### ARTICLE 6—BUSINESS PROFITS

(1) Industrial or commercial profits of a resident of one of the Contracting States shall be taxable only in that State unless such resident is engaged in industrial or commercial activity in the other Contracting State through a permanent establishment situated therein. If such resident is so engaged, tax may be imposed by such other State on the industrial or commercial profits of such resident but only on so much of them as are attributable to the permanent establishment.

(2) Where a resident of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the industrial or commercial profits which would be attributable to such permanent establishment if such permanent establishment were an independent entity engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the resident of which it is a permanent establishment.

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are reasonably connected with such profits including executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.

(4) No profits shall be attributed to a permanent establishment merely by reason of the purchase of goods or merchandise by that permanent establishment, or by the resident of which it is a permanent establishment, for the account of that resident.

(5) The term “industrial or commercial profits of a resident” includes income derived from manufacturing, mercantile, agricultural, fishing, or mining activities, from the operation of ships or aircraft, from the furnishing of personal services, from the rental of tangible personal property, and from insurance activities and rents or royalties derived from motion picture films, films

or tapes of radio or television broadcasting. It also includes income derived from real property and natural resources and dividends, interest, royalties (as defined in paragraphs (3) and (4) of Article 11), and capital gains but only if the right or property giving rise to such income, dividends, interest, royalties, or capital gains is effectively connected with a permanent establishment which the recipient, being a resident of one Contracting State, has in the other Contracting State. It does not include income received by an individual as compensation for personal services either as an employee or in an independent capacity.

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#### ARTICLE 9—DIVIDENDS

(1) Dividends derived from sources within a Contracting State by a resident of the other Contracting State may be taxed in that other State.

(2) Dividends derived from sources within a Contracting State by a resident of the other Contracting State may also be taxed by the former Contracting State but the tax imposed on such dividends shall not exceed—

(a) 15 percent of the amount actually distributed; or

(b) When the recipient is a corporation, 5 percent of the amount actually distributed if—

(i) During the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10 percent of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation, and

(ii) Not more than 25 percent of the gross income of the paying corporation for such prior taxable year (if any) consisted of interest and dividends (other than interest derived in the conduct of a banking, insurance, or financing business and dividends or interest received from subsidiary corporations, 50 percent or more of the outstanding shares of the voting stock of which was owned by the paying corporation at the time such dividends or interest were received).

(3) Paragraph (2) of this Article and, in the case of dividends derived by a resident of France, paragraph (1) of this Article, shall not apply if the recipient of the dividends has a permanent establishment in the other Contracting State and the shares with respect to which the dividends are paid are effectively connected with the permanent establishment. In such a case, the provisions of Article 6 shall apply.

(4)(a) Except as provided in subparagraph (b), dividends paid by a corporation of one of the Contracting States shall be treated as income from sources within that Contracting State, and dividends paid by any other cor-

poration shall be treated as income from sources outside that Contracting State.

(b) Dividends paid by a corporation other than a U.S. corporation shall be treated as dividends from sources within the United States if such corporation had a permanent establishment in the United States and more than 80 percent of its gross income was taxable to such permanent establishment for a 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such portion of that period as the corporation has been in existence).

(5) When the prepayment (precompte) is levied on dividends paid by a French corporation to a resident of the United States, such resident shall be entitled to the refund of that prepayment, subject to deduction of the withholding tax with respect to the refunded amount in accordance with paragraph (2) of this Article.

#### ARTICLE 10—INTEREST

(1) Interest derived from sources within one Contracting State by a resident of the other Contracting State may be taxed in that other State.

(2) Interest on bonds, notes, debentures, or any other form of indebtedness from sources within the United States and paid to a resident of France may also be taxed by the United States at a rate not in excess of 10 percent of the amount paid.

(3) Interest on bonds, notes, debentures, or any other form of indebtedness from sources within France and paid to a resident of the United States may also be taxed by France at a rate not in excess of 10 percent of the amount paid except that interest on bonds issued before January 1, 1965, may be taxed at a rate not in excess of 12 percent of the amount paid.

(4) Paragraphs (2) and (3) of this Article and, in the case of interest derived by a resident of France, paragraph (1) of this Article, shall not apply if the recipient of the interest, being a resident of one of the Contracting States, has a permanent establishment in the other Contracting State and the indebtedness giving rise to the interest is effectively connected to such permanent establishment. In such a case, the provisions of Article 6 shall apply.

(5) The term "interest" as used in this article means income from Government securities, bonds, or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income has its source.

(6) Interest shall be deemed to be from sources within a Contracting State when the payer is that State itself, a political subdivision, a local authority, or a resident of that

State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to be from sources within the Contracting State in which the permanent establishment is situated.

(7) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

(8) Interest received by one of the Contracting States, or by an instrumentality of that State not subject to income tax by such State, shall be exempt in the State in which such interest has its source.

#### ARTICLE 11—ROYALTIES

(1) Royalties derived from sources within one Contracting State by a resident of the other Contracting State may be taxed in that other State.

(2) Except as provided in paragraph (3), royalties derived from sources within a Contracting State by a resident of the other Contracting State may also be taxed by the former Contracting State but the tax imposed on such royalties shall not exceed 5 percent of the gross amount paid.

(3) Royalties derived from copyrights of literary, artistic, or scientific works (including gain from the sale or exchange of property giving rise to such royalties) by a resident of one Contracting State shall be taxable only in that Contracting State.

(4) The term "royalties" as used in paragraph (1) of this Article means—

(a) Any royalties, rentals, or other amounts paid as consideration for the use of, or the right to use, patents, designs or models, plans, secret processes or formulae, trademarks, or other like property or rights, or for knowledge, experience, or skill (know-how), and

(b) Gains derived from the sale or exchange of any such right or property, if payment of the amounts realized on such sale or exchange is contingent, in whole or in part, on the productivity, use or disposition of such right or property. If the amounts derived from the sale or exchange of any such right or property are not so contingent, the provisions of Article 12 shall apply.

(5) Paragraphs (2) and (3) of this Article, and, in the case of royalties derived by a resident of France, paragraph (1) of this Article, shall not apply if the recipient of the royalty, being a resident of one of the Contracting States, has in the other Contracting State a permanent establishment and the right or property giving rise to the royalties is effectively connected with such permanent establishment. In such a case, the provisions of Article 6 shall apply.

(6) Royalties paid for the use of, or the right to use, property described in paragraph (4) in a State shall be treated as income from sources within that State.

(7) Where, owing to a special relationship between the payer and the recipient, or between both of them and some other person, the amount of the royalties paid exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall only apply to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

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#### ARTICLE 13—BRANCH PROFITS

(1)(a) Dividends paid by a French corporation to a person other than a citizen, resident, or corporation of the United States shall be exempt from tax by the United States unless such French corporation had a permanent establishment in the United States and more than 80 percent of its gross income was taxable to such permanent establishment for a 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such portion of that period as the corporation has been in existence).

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#### ARTICLE 16—GOVERNMENTAL FUNCTIONS

(1) Remuneration, including pensions, paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to any individual who is a national of that State in respect of services rendered to that State or a subdivision or local authority thereof in the discharge of functions of a governmental nature shall be taxable only in that Contracting State.

(2) The provisions of Articles 15, 19, and 20 shall apply to remuneration or pensions in respect of services rendered in connection with any industrial or commercial activity carried on by one of the Contracting States or a political subdivision or a local authority thereof.

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(3) In the case of an individual who is a national of both Contracting States, the provisions of Article 22, paragraph (4), shall apply to remuneration described in paragraph (1) but such remuneration shall be treated as income from sources within the Contracting State from which such individual receives such remuneration.

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ARTICLE 19—PRIVATE PENSIONS AND ANNUITIES

(1) Except as provided in Article 16, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

(2) Alimony and annuities paid to a resident of a Contracting State shall be taxable only in that Contracting State.

(3) The term "annuities," as used in this Article, means a stated sum paid periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

(4) The term "pensions," as used in this Article, means periodic payments made after retirement in consideration for, or by way of compensation for injuries received in connection with, past employment.

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ARTICLE 27—ASSISTANCE IN COLLECTION

(1) The two Contracting States undertake to lend assistance and support to each other in the collection of the taxes to which the present Convention relates, together with interest, costs, and additions to the taxes and fines not being of a penal character according to the laws of the State requested, in the cases where the taxes are definitively due according to the laws of the State making the application.

(2) In the case of an application for enforcement of taxes, revenue claims of each of the Contracting States which have been finally determined will be accepted for enforcement by the State to which application is made and collected in that State in accordance with the laws applicable to the enforcement and collection of its own taxes.

(3) The application will be accompanied by such documents as are required by the laws of the State making the application to establish that the taxes have been finally determined.

(4) If the revenue claim has not been finally determined, the State to which application is made will take such measures of conservancy (including measures with respect to transfer of property of nonresident

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aliens) as are authorized by its laws for the enforcement of its own taxes.

(5) The assistance provided for in this Article shall not be accorded with respect to citizens, corporations, or other entities of the State to which application is made.

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ARTICLE 31—ENTRY INTO FORCE

(1) This Convention shall be ratified and instruments of ratification shall be exchanged at Washington. It shall enter into force 1 month after the date of exchange of the instruments of ratification. Its provisions shall for the first time have effect:

(a) In the case of France:

(i) As respects withholding taxes, to any proceeds payable and transactions completed on or after the date on which this Convention enters into force;

(ii) As respects other income taxes, to taxes which are levied for the assessment year 1967; and

(iii) As respects the tax on stock exchange transactions, the date on which this Convention enters into force.

(b) In the case of the United States:

(i) As respects the rate of withholding tax, to amounts received on or after the date on which this Convention enters into force;

(ii) As respects other income taxes, to taxable years beginning on or after January 1, 1967.

(2) Upon the coming into effect of this Convention, there shall terminate:

(a) The Convention of July 25, 1939, relating to income and other taxes.

(b) The Convention of October 18, 1946, the supplementary Protocol of May 17, 1948, and the Convention of June 22, 1956, insofar as they concern taxes on income, on capital and tax on stock exchange transactions.

The provisions of those Conventions and of that Protocol will cease to have effect from the date on which the corresponding provisions of the present Convention shall for the first time have effect according to the subparagraph (1) above-mentioned.

ARTICLE 32—TERMINATION

This Convention shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Convention, through diplomatic channels, by giving notice of termination at least 6 months before the end of any calendar year after the year 1969. In such event, the Convention shall cease to have effect:

(1) In the case of France:

(a) As respects withholding taxes, on January 1 of the year following the year in which notice is given.

(b) As respects other income taxes, for any year of assessment beginning on or after

January 1 of the year following the year in which notice is given; and

(c) As respects the tax on stock exchange transactions, for any transactions occurring on or after January 1 of the year following the year in which notice is given.

(2) In the case of the United States:

(a) As respects withholding taxes, on January 1 of the year following the year in which notice is given;

(b) As respects other income taxes, for any taxable year beginning on or after January 1 of the year following the year in which notice is given; and

(c) As respects taxes referred to in paragraph (2) of Article 1, for any transactions occurring on or after January 1 of the year following the year in which notice is given.

(b) *Definitions.* Any term defined in the convention shall have the meaning so assigned to it; any term not so defined shall, unless the context otherwise requires, have the meaning which such term has under the internal revenue laws of the United States.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53498, Oct. 14, 1997, § 514.20 was removed, effective Jan. 1, 1999.

#### § 514.21 Dividends.

(a) *Exemption from or reduction in rate of United States tax—(1) Exempt from U.S. tax.* Except as provided in subparagraph (2) of this paragraph, dividends paid by a French corporation on or after August 11, 1968, to a nonresident alien individual or foreign corporation are exempt from tax by the United States under the provisions of Article 13(1)(a) of the convention. Such dividends are, therefore, not subject to the withholding of U.S. tax at source.

(2) *Exemption and reduced rate of withholding not applicable.* Dividends paid by a French corporation on or after August 11, 1968, to a nonresident alien individual or foreign corporation (other than a resident of France or a French corporation) are subject to U.S. tax in accordance with the provisions of section 871(a) or 881(a) of the Internal Revenue Code and the regulations thereunder if the paying corporation has a permanent establishment in the United States and more than 80 percent of its gross income was taxable to such permanent establishment for a 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such portion of

that period as the corporation has been in existence). Such dividends are not eligible for the reduced rate of withholding under Article 9(2) of the convention or to exemption from tax under Article 13(1)(a) of the convention.

(3) *Application of reduced rate—(i) Rate of 15 percent.* Except as provided in subdivision (ii) of this subparagraph, and subparagraph (4) of this paragraph the rate of U.S. tax imposed upon dividends derived from sources within the United States on or after August 11, 1968, and received by a nonresident alien individual who is a resident of France or a French corporation or a person resident in France for French tax purposes shall not exceed 15 percent of the gross amount actually distributed as provided for in Article 9(2) of the convention. For the purposes of this section the gross amount actually distributed includes amounts constructively received.

(ii) *Rate of 5 percent.* The rate of U.S. tax imposed upon dividends derived from sources within the United States on or after August 11, 1968, and received by a French corporation shall not exceed 5 percent of the gross amount actually distributed if—

(a) During the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10 percent of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation, and

(b) Not more than 25 percent of the gross income of the paying corporation for such prior taxable year (if any) consisted of interest and dividends (other than interest derived in the conduct of a banking, insurance, or financing business and dividends or interest received from subsidiary corporations, 50 percent or more of the outstanding shares of the voting stock of which was owned by the paying corporation at the time such dividends or interest were received).

(iii) *Information to be filed with the Commissioner when claiming a 5-percent rate.* Any paying corporation which claims or contemplates claiming that dividends paid or to be paid by it on or

after August 11, 1968, are subject to United States tax at the rate of 5 percent under Article 9 of the convention shall file the following information with the Commissioner of Internal Revenue, Washington, D.C. 20224, as soon as practicable:

(a) The date and place of its organization;

(b) The number and a brief description of outstanding shares of stock of the paying corporation and the voting power thereof;

(c) The number of shares of each class of voting stock of the paying corporation owned by the recipient corporation and the date the recipient corporation acquired such stock;

(d) The amount of the gross income of the paying corporation for its taxable year immediately preceding the taxable year in which the dividends are paid;

(e) The amount of the interest and dividends included in such gross income, the amount of such interest derived in the conduct of a banking, insurance, or financing business, if any, and the amount of such interest and dividends received from a subsidiary corporation in which the paying corporation owns at least 50 percent of the voting stock on the date of receipt.

(iv) *Notification by Commissioner—5 percent rate.* As soon as practicable after such information is filed, the Commissioner of Internal Revenue will determine whether the dividends concerned qualify under Article 9 of the convention for the reduced rate of 5 percent and will notify the paying corporation of his determination. If the dividends qualify for such reduced rate, this notification may also authorize the release, pursuant to § 514.28(a)(1)(ii), of excess tax withheld from the dividends concerned. A duplicate copy of such notification shall be attached to the Form 1042S filed by the paying corporation for the first year of payment. There shall be attached to Form 1042S filed by the paying corporation for each subsequent year of payment a statement that the conditions upon which the notification was issued are applicable to such subsequent year.

(4) *Dividends effectively connected with a permanent establishment.* The reduction in rate of tax provided in subpara-

graph (3) of this paragraph shall not apply if the owner of the dividends has a permanent establishment in the United States and the shares with respect to which the dividends are paid are effectively connected with such permanent establishment. Such dividends are subject to tax in accordance with the provisions of Article 6 of the convention.

(b) *Withholding of tax from dividends—*  
(1) *15 percent rate—(i) Reduction based on address in France.* Except as provided in subparagraph (2) of this paragraph, withholding of United States tax at source on or after August 11, 1968, from dividends derived from sources within the United States by a person whose address is in France, shall be at the reduced rate of 15 percent in every case except that in which, prior to the date of payment of such dividends, the Commissioner of Internal Revenue or the owner of the dividends has notified the withholding agent that such reduced rate of withholding shall not apply.

(ii) *Reduced rate of 15 percent applicable only to owner of capital stock.* The reduced rate of 15 percent is available only to the real owner of the capital stock from which the dividend is derived. As to action by a French addressee who is not the real owner of the capital stock, see § 514.22(c).

(iii) *Evidence of rate of tax withheld.* The rate at which U.S. tax has been withheld from a dividend paid on or after August 11, 1968, to a person whose address is in France on the date the dividend is paid to such person shall be shown either in writing or by appropriate stamp on the check, draft, or other evidence of payment, or on an accompanying statement.

(2) *5-percent rate—(i) Reduction based on notification by Commissioner.* If, in accordance with paragraph (a)(3)(iv) of this section, the Commissioner of Internal Revenue has notified the paying corporation that the dividends qualify under Article 9 of the convention for the reduced rate of 5 percent, the reduced withholding rate of 5 percent, to the extent withholding of U.S. tax is required, shall apply to any dividends paid by the paying corporation on or after August 11, 1968.



(ii) *Dividends cease to qualify for 5-percent rate.* If, after receipt of notification from the Commissioner of Internal Revenue that the dividends qualify for the reduced rate of 5 percent, the French recipient corporation ceases to be eligible for the reduction in rate because one or more of the conditions of subdivision (ii) (a) or (b) of paragraph (a)(3) of this section are not satisfied, the reduction in the rate of withholding of U.S. tax shall no longer apply. When any change occurs in the ownership of stock as recorded on the books of the paying corporation or in the percentage of dividends and interest included in gross income of the paying corporation, the paying corporation shall notify the Commissioner of Internal Revenue as soon as possible.

(iii) *Evidence of tax withheld.* The rate at which U.S. tax has been withheld from a dividend paid on or after August 11, 1968, to a French corporation shall be shown either in writing or by appropriate stamp on the check, draft, or other evidence of payment, or on an accompanying statement.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53498, Oct. 14, 1997, § 514.21 was removed, effective Jan. 1, 1999.

**§ 514.22 Dividends received by persons not entitled to reduced rate of tax.**

(a) *General.* Article 27(1) of the convention provides that each Contracting State shall undertake to lend assistance and support to the other Contracting State in the collection of taxes covered by the convention.

(b) *Additional French tax to be withheld in the United States—*(1) *By a nominee or representative.* The recipient in the United States of any dividend from which French tax has been withheld at the reduced rate of 15 percent, who is a nominee or representative through whom the dividend is received by a person who is not a resident of the United States, shall withhold an additional amount of French tax equivalent to the French tax which would have been withheld if the convention had not been in effect (25 percent as of the date of approval of this Treasury decision) minus the 15 percent which has been withheld at the source.

(2) *By a fiduciary or partnership.* A fiduciary or partnership with an address

in the United States which receives, otherwise than as a nominee or representative, a dividend from sources within France from which French tax has been withheld at the reduced rate of 15 percent, shall withhold an additional amount of French tax from the portion of the dividend included in the gross income from sources within France of any beneficiary or partner, as the case may be, who is not entitled to the reduced rate of tax in accordance with the applicable provisions of the convention. The amount of the additional tax is to be calculated in the same manner as under subparagraph (1) of this paragraph.

(3) *Withholding additional French tax from amounts released or refunded.* If any amount of French tax is released by the withholding agent in France with respect to a dividend received by a nominee, representative, fiduciary, or partnership in the United States, the recipient shall withhold from such released amount any additional amount of French tax otherwise required to be withheld from the dividend by the provisions of subparagraphs (1) and (2) of this paragraph, in the same manner as if at the time of payment of the dividends French tax at the rate of 15 percent had been withheld therefrom.

(4) *Return of French tax by U.S. withholding agents.* Amounts of French tax withheld pursuant to this paragraph by withholding agents in the United States shall be deposited in U.S. dollars with the Director, Office of International Operations, Internal Revenue Service, Washington, D.C. 20225, on or before the 16th day after the close of the quarter of the calendar year in which the withholding occurs. Such withholding agent shall also submit such appropriate forms as may be prescribed by the Commissioner of Internal Revenue.

(c) *Additional U.S. tax to be withheld in France—*(1) *By a nominee or representative.* The recipient in France of any dividend from which U.S. tax has been withheld at the reduced rate of 15 percent pursuant to § 514.21(b)(1), who is a nominee or representative through whom the dividend is received by a person who is not entitled to the reduced rate in accordance with § 514.21(a)(3)(i), shall withhold an additional amount of

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U.S. tax equivalent to the U.S. tax which would have been withheld if the convention had not been in effect (30 percent as of the date of approval of this Treasury decision) minus the 15 percent which has been withheld at the source.

(2) *By a fiduciary or partnership.* A fiduciary or partnership with an address in France which receives, otherwise than as a nominee or representative, a dividend from which U.S. tax has been withheld at the reduced rate of 15 percent pursuant to § 514.21(b)(1) shall withhold an additional amount of U.S. tax from the portion of the dividend included in the gross income from sources within the United States of any beneficiary or partner, as the case may be, who is not entitled to the reduced rate of tax in accordance with § 514.21(a)(3)(i). The amount of the additional tax is to be calculated in the same manner as under subparagraph (1) of this paragraph.

(3) *Released amounts of tax.* If any amount of U.S. tax is released pursuant to § 514.28 by the withholding agent in the United States with respect to a dividend received by a nominee, representative, fiduciary, or partnership with an address in France, the recipient shall withhold from such released amount any additional amount of U.S. tax, otherwise required to be withheld from the dividend by the provisions of subparagraphs (1) and (2) of this paragraph, in the same manner as if at the time of payment of the dividends U.S. tax at the rate of 15 percent has been withheld at source therefrom.

(4) *Return of U.S. tax by French withholding agents.* Amounts of U.S. tax withheld pursuant to this paragraph by withholding agents in France shall be deposited without converting the amounts into U.S. dollars, with the Directeur General des Impôts of France on or before the 16th day after the close of the quarter of the calendar year in which the withholding occurs. The withholding agent making the deposit shall render therewith such appropriate French form as may be prescribed by the Directeur General des Impôts. The amounts so deposited should be remitted by the Directeur General des Impôts by draft in United States dollars to the director, Office of

International Operations, Internal Revenue Service, Washington, D.C. 20225, and should be accompanied by such French form as may be required to be rendered by the withholding agent in France in connection with the deposit.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53498, Oct. 14, 1997, § 514.22 was amended by removing paragraph (c), effective Jan. 1, 1999.

### § 514.23 Interest.

(a) *Not subject to U.S. tax.* Interest derived from sources within the United States on or after August 11, 1968, by the French Government or by an instrumentality of the French Government and which is not subject to income tax in France is exempt from U.S. tax under the provisions of Article 10(8). Such interest is not subject to withholding of U.S. tax at source.

(b) *Application of reduced rate—(1) In general.* Except as provided in subparagraph (2) of this paragraph, the rate of U.S. tax imposed by the Internal Revenue Code upon interest derived from sources within the United States on or after August 11, 1968, by a nonresident alien individual who is a resident of France, or French corporation or person resident in France for French tax purposes shall not exceed 10 percent under the provisions of Article 10(2) of the convention.

(2) *Definitions.* As used in this paragraph, the term “interest” means income from Government securities, bonds, or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the United States, including interest on certain deferred payments described in section 483 of the Internal Revenue Code and original issue discount described in section 1232(b) of the Internal Revenue Code.

(3) *Interest effectively connected with a permanent establishment.* The reduction in rate of tax provided in subparagraph (1) of this paragraph shall not apply if the owner thereof has a permanent establishment in the United States and the indebtedness giving rise to the interest is effectively connected to such permanent establishment. Such interest is subject to tax in accordance with

the provisions of Article 6 of the convention.

(c) *Withholding of tax from interest*—(1) *Coupon bond interest*—(i) *Form to use.* To secure withholding of U.S. tax at the rate of 10 percent in the case of coupon bond interest, the nonresident alien individual who is a resident of France, or French corporation or person resident in France for French tax purposes shall, for each issue of bonds, file Form 1001-F in duplicate when presenting the interest coupons for payment. This form shall be signed by the owner of the interest, or by his trustee or agent, and shall show the information required by paragraph (d) of § 1.1461-1 of this chapter. It shall contain a statement that at the time the interest is derived the owner (a) if an individual, is neither a citizen nor resident of the United States, but is a resident of France, or is a French corporation or person resident in France for French tax purposes, and (b) has no permanent establishment in the United States, or if the owner does have such a permanent establishment, the indebtedness giving rise to the interest is not effectively connected to such permanent establishment.

(ii) *Reduction in rate applicable only to owner.* The reduction in the rate of U.S. tax contemplated by Article 10(2) of the convention, insofar as it concerns coupon bond interest, is applicable only to the owner of the interest. The person presenting the coupon or on whose behalf it is presented, shall, for the purpose of the reduction in tax, be deemed to be the owner of the interest only if he is, at the time the coupon is presented for payment, the owner of the bond from which the coupon has been detached. If the person presenting the coupon, or on whose behalf it is presented, is not the owner of the bond, Form 1001, and not Form 1001-F, shall be used, and U.S. tax shall be withheld at the statutory rate.

(iii) *Disposition of Form 1001-F.* The original and duplicate of Form 1001-F shall be forwarded by the withholding agent to the Director, Office of International Operations, Internal Revenue Service, Washington, D.C. 20225, in accordance with paragraph (b)(2) of § 1.1461-2 of this chapter, with the annual return on Form 1042. A summary

of the Form 1001 or 1001-F shall be reported on Form 1042 as provided by instructions thereto.

(2) *Other interest*—(i) *Letter of notification.* To secure the reduced rate of U.S. tax at source in the case of interest other than coupon bond interest, the nonresident alien individual who is a resident of France, or French corporation or person resident in France for French tax purposes, shall notify the withholding agent by letter in duplicate that the interest is taxable at the reduced rate of tax provided in Article 10(2) of the convention. The letter of notification shall be signed by the owner of the interest, or by his trustee or agent, shall show the name and address of the obligor and the name and address of the owner of the interest, and shall indicate the dates on which the taxable years of the owner to which the letter is applicable begin and end. The letter shall contain a statement that the owner (a) if an individual, is neither a citizen nor a resident of the United States but is a resident of France, or is a French corporation or other entity resident in France for French tax purposes, and (b) does not have a permanent establishment in the United States or, if the owner does have such a permanent establishment, a statement that the indebtedness giving rise to the income is not effectively connected to such permanent establishment. If the interest is taxable at the reduced rate of tax, the letter of notification may also authorize the release, pursuant to § 514.28, of excess tax withheld from the interest concerned.

(ii) *Manner of filing letter.* The letter of notification, which shall constitute authorization for the withholding of U.S. tax at source at the reduced rate of 10 percent, shall be filed with the withholding agent as soon as practicable for each successive 3-calendar-year period during which the income is paid. Once a letter has been filed in respect of any 3-calendar-year period, no additional letter need be filed in respect thereto unless the Commissioner of Internal Revenue notifies the withholding agent that an additional letter shall be filed by the owner of the interest. If, after filing a letter of notification, the taxpayer ceases to be eligible

for the exemption from U.S. tax granted by Article 10(2) of the convention, he shall promptly notify the withholding agent by letter in duplicate. When any change occurs in the ownership of the income as recorded on the books of the payer, the reduction in rate of withholding of U.S. tax shall no longer apply unless the new owner of record is entitled to such reduced rate and promptly files a letter of notification with the withholding agent.

(iii) *Disposition of letter.* The original of each letter of notification filed pursuant to this subparagraph shall be retained by the withholding agent and the duplicate shall be immediately forwarded by the withholding agent to the Director, Office of International Operations, Internal Revenue Service, Washington, D.C. 20225.

(3) *Change in circumstances.* If the owner of the interest acquires a permanent establishment in the United States after filing a letter of notification referred to in subparagraph (2) of this paragraph, such owner shall file a new letter of notification even though the indebtedness giving rise to the income to which such document relates is not effectively connected to such permanent establishment

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53498, Oct. 14, 1997, § 514.23 was removed, effective Jan. 1, 1999.

#### § 514.24 Royalties.

(a) *Exemption from U.S. tax—(1) Copyright royalties.* Except as provided in subparagraph (2) of this paragraph royalties or other amounts paid as consideration for the use of, or for the right to use copyrights of literary, artistic, or scientific works (including gain from the sale or exchange of property giving rise to such royalties) which are derived from sources within the United States on or after August 11, 1968, by a nonresident alien individual who is a resident of France, or by a French corporation or a person resident in France for French tax purposes are exempt from U.S. tax under the provisions of Article 11(3) of the convention.

(2) *Copyright royalties effectively connected with a permanent establishment.* The exemption from tax provided in subparagraph (1) of this paragraph shall not apply if the owner of such

royalties, or of gain from the sale or exchange of property giving rise to such royalties, has a permanent establishment in the United States and the property giving rise to such royalties or gain is effectively connected with such permanent establishment. Such royalties are subject to tax in accordance with the provisions of Article 6.

(3) *Exemption from withholding of tax—(i) Use of letter of notification.* To avoid withholding of U.S. tax at source with respect to copyright royalties to which this paragraph applies, the nonresident alien who is a resident of France or French corporation or person resident in France for French tax purposes, shall notify the withholding agent by letter in duplicate that the royalty is exempt from U.S. tax under Article 11(3) of the convention. The letter of notification shall be signed by the owner of the royalty or of the gain from the sale or exchange of property giving rise to such royalty, or by the trustee or agent of such owner, and shall show the name and address of the owner. The letter shall contain a statement that at the time the royalty is derived the owner (a) if an individual, is neither a citizen nor a resident of the United States but is a resident of France or, if a corporation or other entity is resident in France for French tax purposes, and (b) has no permanent establishment in the United States or, if the owner does have such a permanent establishment, a statement that the property or right giving rise to such royalty is not effectively connected with such permanent establishment. If the royalty is exempt from U.S. tax, the letter of notification may also authorize the release, pursuant to § 514.28 of excess tax withheld from the royalty concerned.

(ii) *Manner of filing letter of notification.* The provisions of § 514.23(c)(2)(ii) and (iii) relating to the execution, filing, and effective period of the letter of notification prescribed therein with respect to interest, including its use for the release of excess tax withheld and § 514.23(c)(3) relating to change of circumstances, are equally applicable with respect to the income falling within the scope of this section.

(b) *Reduction in rate of United States tax—(1) Industrial royalties.* Except as

provided in subparagraph (3) of this paragraph, the rate of U.S. tax imposed on royalties, derived from sources within the United States on or after August 11, 1968, by a nonresident alien individual who is a resident of France, or by a French corporation shall not, under Article 11(2) of the convention, exceed 5 percent of the gross amount paid.

(2) *Definitions.* As used in this paragraph, the term “royalty” means royalties, rentals, or other amounts (other than royalties described in paragraph (a)(1) of this section) paid as consideration for the use of or the right to use patents, designs or models, plans, secret processes or formulae, trademarks, or other like property or rights, or for knowledge, experience, or skill (know-how) and gains derived from the sale or exchange of such right or property if payment is contingent, in whole or in part, on the productivity use, or disposition of the property or rights sold. The term “royalty” does not include natural resource royalties which are subject to tax in accordance with the provisions of Article 5 of the convention.

(3) *Industrial royalties effectively connected with a permanent establishment.* The reduction in rate of tax provided in subparagraph (1) of this paragraph shall not apply if the owner of the royalties or of the gain from the sale or exchange of the property or right giving rise to such royalties has a permanent establishment in the United States and the property or right giving rise to such royalties or gain is effectively connected with such permanent establishment. Such royalties are subject to tax in accordance with the provisions of Article 6 of the convention.

(4) *Withholding of U.S. tax from industrial royalties.* In order to secure the reduced rate of U.S. tax at source as provided in subparagraph (1) of this paragraph, the nonresident alien individual who is a resident of France or French corporation or person resident in France for French tax purposes shall notify the withholding agent by letter in duplicate that the royalty qualifies for the reduced rate of U.S. tax granted by Article 11(2) of the convention. The letter of notification shall be signed by the owner of the royalty, or by the

trustee or agent of such owner, and shall show the name and address of the owner. The provisions of subparagraph (3) of paragraph (a) of this section relating to the form, content, execution, filing, and effective period of the letter of notification prescribed therein with respect to copyright royalties, including its use for the release of excess tax withheld and relating to change of circumstances, are equally applicable with respect to industrial royalties.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53498, Oct. 14, 1997, §514.24 was removed, effective Jan. 1, 1999.

#### **§514.25 Private pensions, alimony, and annuities.**

(a) *Exemption from U.S. tax—(1) Requirements.* Any pension (other than one paid by the United States or a political subdivision or a local authority thereof to an individual who is a citizen of the United States for the discharge of governmental functions), alimony, or annuity derived from sources within the United States by a nonresident alien individual who is a resident of France and received in a taxable year of the recipient beginning after December 31, 1966, shall be exempt from U.S. tax under the provisions of Article 19 of the convention.

(2) *Definitions—(i) Pension.* As used in this paragraph, the term “pension” means periodic payments made after retirement in consideration of past employment or as compensation for injuries received in connection with past employment. The term “pension” does not include retirement pay or pensions paid by the United States or by any State or local authority of the United States which are subject to tax in accordance with the provisions of Article 16 of this convention.

(ii) *Annuity.* The term “annuity” means a stated sum paid periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered), but not including retirement pay or pensions paid by the United States or by any State or territory of the United States.

(b) *Exemption from withholding tax—(1) Use of letter of notification.* To avoid

withholding of U.S. tax at source with respect to pensions, alimony, or annuities which are exempt from U.S. tax in accordance with paragraph (a) of this section, the nonresident alien individual who is a resident of France shall notify the withholding agent by letter in duplicate that the pension, alimony, or annuity is exempt from U.S. tax under Article 19 of the convention. The letter of notification shall be signed by the owner of the income, shall show the name and address of both the payer and the owner of the income, and shall contain a statement that at the time the income is received, the owner is neither a citizen nor a resident of the United States but is a resident of France.

(2) *Manner of filing letter.* The provisions of § 514.23(c)(2)(ii) and (iii) relating to the execution, filing, and effective period of the letter of notification prescribed therein with respect to interest, including its use for the release of excess tax withheld and § 514.23(c)(3) relating to change of circumstances, are equally applicable with respect to the income falling within the scope of this section.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53498, Oct. 14, 1997, § 514.25 was removed, effective Jan. 1, 1999.

#### **§ 514.26 Income covered by convention.**

(a) *Exemption from or reduction in rate of tax—(1) Request for ruling.* If a nonresident alien individual who is a resident of France or French corporation or person resident in France for French tax purposes claims or contemplates claiming that an item of income (including income referred to in §§ 514.21 through 514.25) is exempt from, or subject to a reduced rate of, U.S. tax under the convention, such owner of the income may request a ruling to that effect from the Commissioner of Internal Revenue, Washington, D.C. 20224, by filing a statement setting forth all the facts pertinent to a determination of the question.

(2) *Notification of applicant.* As soon as practicable after such information is filed, the Commissioner will determine whether the income concerned qualifies under the convention for exemption from or reduced rate of, U.S. tax

and will notify the applicant of his ruling. If income qualifies for such benefit, this notification may also authorize the release, pursuant to § 514.28(a)(2), of excess tax withheld from the income concerned.

(b) *Exemption from, or reduction in rate of, withholding—(1) Notification of withholding agent.* If the Commissioner rules that income received by such applicant qualifies for exemption from, or reduction in rate of, U.S. tax under the convention, and the applicant sends a copy of such ruling to the withholding agent, the income designated in such ruling shall be exempt, or subject to a reduced rate of, withholding of U.S. tax unless the Commissioner or the applicant notifies the withholding agent that such income ceases to qualify for such benefit. A duplicate copy of such notification shall be attached to the Form 1042S filed by the withholding agent with respect to the income concerned.

(2) *Change in circumstances.* If during the period covered by the ruling letter, any fact upon which the ruling letter is based materially changes, the applicant shall immediately notify the withholding agent and the Commissioner of such change.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53498, Oct. 14, 1997, § 514.26 was removed, effective Jan. 1, 1999.

#### **§ 514.27 Beneficiaries of domestic estate and trust.**

A nonresident alien individual who is a resident of France and a beneficiary of a domestic estate or trust shall be entitled to the exemption from, or reduction in rate of, United States tax granted by Articles 9, 10, 11, 13(1)(a), and 19 of the convention with respect to dividends, interest, royalties, and pensions, annuities, and alimony if he otherwise satisfies the requirements for exemption or reduction specified in the articles concerned, to the extent that (a) any amount paid, credited, or required to be distributed by the estate or trust to the beneficiary is deemed to consist of those items and (b) the items so deemed to be included in such amount would, without regard to the convention, be includible in his gross income. However, such beneficiary is not entitled to the exemption from, or

reduction in the rate of, U.S. tax granted by such articles to the extent that the trust conduit rules are not applicable to any payment received by the beneficiary such as, for example, a payment made out of the income of a trust established for the support and maintenance of a wife pursuant to a divorce decree. To obtain the exemption from, or reduction in the rate of, withholding of U.S. tax where permitted by this section, the beneficiary must, where applicable, execute and submit to the fiduciary of the estate or trust in the United States the appropriate letter of notification in the form prescribed in § 514.23(c) (2) and (3), modified where necessary to indicate the type of income involved.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53498, Oct. 14, 1997, § 514.27 was removed, effective Jan. 1, 1999.

**§ 514.28 Release of excess tax withheld at source.**

(a) *Amounts to be released*—(1) *Tax withheld from dividends*—(i) *Dividends subject to 15-percent rate.* If U.S. tax has been withheld on or after August 11, 1968, at a rate in excess of 15 percent from dividends described in § 514.21(a)(3)(i) received by a non-resident alien individual who is a resident of France or French corporation or person resident in France for French tax purposes whose address at the time of payment was in France, the withholding agent shall release and pay over to the person from whom the tax was withheld an amount which is equal to the difference between the tax so withheld and the tax required to be withheld pursuant to § 514.21(b)(1).

(ii) *Dividends subject to 5-percent rate.* If U.S. tax has been withheld at a rate in excess of 5 percent on or after August 11, 1968, from dividends which qualify for the reduced rate of 5 percent under § 514.21(a)(3)(ii), the withholding agent shall, if so authorized in accordance with § 514.21(a)(3)(iv) release and pay over to the corporation from which the tax was withheld an amount which is equal to the difference between the tax so withheld and the tax required to be withheld pursuant to § 514.21(b)(2)(i).

(2) *Tax withheld from coupon bond interest*—(i) *Substitute ownership certifi-*

*cate.* If U.S. tax has been withheld at a rate in excess of 10 percent on or after August 11, 1968, from coupon bond interest described in § 514.23(c)(1), the owner of the interest shall furnish the withholding agent a Form 1001-F clearly marked "Substitute" and executed in accordance with § 514.23(c). Upon receipt of such substitute Form 1001-F the withholding agent shall release and pay over to the person from whom the tax was withheld an amount which is equal to the difference between the tax so withheld and the tax required to be withheld pursuant to § 514.23(b)(1).

(ii) *Filing and disposition of substitute ownership certificate.* One substitute Form 1001-F shall be filed in duplicate with respect to each issue of bonds and will serve with respect to that issue to replace all Forms 1001 or 1001-F previously filed by the owner of the interest in the calendar year in which the excess tax was withheld and with respect to which the excess is released. Such forms shall be disposed of in accordance with the rules of § 514.23(c)(1)(iii).

(3) *Tax withheld from other income covered by convention.* If the owner of the other income furnishes to the withholding agent the letter of notification prescribed in § 514.24(a)(3) or (b)(4), § 514.25(b)(1), or the authorization for release of tax prescribed in § 514.26(a)(2), and U.S. tax has been withheld at a rate in excess of the rate provided in the convention with respect to payments of income to which such letter of authorization is applicable, made on or after August 11, 1968, or received in the taxable year of the owner beginning after December 31, 1966 (whichever is applicable), the withholding agent shall release and pay to the person from whom the tax was withheld an amount which is equal to the tax so withheld from such income, or to the difference between the tax so withheld and the tax required to be withheld, as the case may be.

(b) *Amounts not to be released.* The provisions of this section do not apply to any excess tax withheld at the source subsequent to the due date for filing Form 1042.

(c) *Statutory rate.* As used in this paragraph, the term "statutory rate" means the rate of tax (30 percent as of

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the date of approval of this Treasury decision) prescribed by subchapter A of chapter 3 (relating to the withholding of tax on nonresident alien individuals and foreign corporations) of the Internal Revenue Code as though the convention has not come into effect.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53498, Oct. 14, 1997, § 514.28 was removed, effective Jan. 1, 1999.

### **§ 514.29 Refund of excess tax paid to Director of International Operations.**

(a) *In general.* Where U.S. tax withheld at the source on items of income covered by the convention is in excess of the tax imposed under subtitle A (relating to the income tax) of the Internal Revenue Code, as modified by the convention, and such withheld amounts have been paid to the Director of International Operations, a claim by the owner of such income for refund of any resulting overpayment may be made under section 6402 of such Code, and the regulations thereunder.

(b) *Form of claim*—(1) *Where return previously filed.* If the owner of the income has previously filed an income tax return with the Internal Revenue Service for the taxable year in which an overpayment has resulted because of the application of the convention, he should make a claim for refund of the overpayment by filing Form 843 or an amended return.

(2) *Where no return previously filed.* If the owner of the income has not previously filed an income tax return with the Internal Revenue Service for the taxable year in which an overpayment has resulted because of the application of the convention, he should make a claim for refund of the overpayment by filing Form 1040NR or Form 1120-F, whichever is applicable, showing the overpayment. Such return will serve as a claim for refund, and it is not necessary for the taxpayer to file Form 843.

(c) *Information required.* If the owner's total gross income (including every item of capital gain subject to tax) from sources within the United States for the taxable year in which such overpayment resulted has not been disclosed in an income tax return filed with the Internal Revenue Service

prior to the time the claim for refund is made, such owner shall disclose such total gross income with his claim. In the event that securities are held in the name of a person other than the actual or beneficial owner, the name and address of such person shall be furnished with the claim. In addition to such other information as may be required to establish the overpayment, there shall also be included in such claim for refund:

(1) A statement that, at the time when the items of income were received from which the excess tax was withheld, the owner was neither a citizen nor a resident of the United States but was a resident of France, a French corporation or person resident in France for French tax purposes.

(2) If the owner's claim is based on exemption from, or reduction in rate of, tax for dividends, interest, or royalties, a statement that the owner does not have a permanent establishment in the United States, or, if the owner does have such a permanent establishment, that the holding from which such income was derived was not effectively connected with such permanent establishment.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53498, Oct. 14, 1997, § 514.29 was removed, effective Jan. 1, 1999.

### **§ 514.30 Information furnished in ordinary course.**

For provisions relating to the exchange of information under Article 30 of the convention, see paragraph (d) of § 1.1461-2 of this chapter.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53498, Oct. 14, 1997, § 514.30 was removed, effective Jan. 1, 1999.

### **§ 514.31 Return required when liability not satisfied by withholding.**

For action by a nonresident alien individual who is a resident of France or a French corporation or person resident in France for French tax purposes in a case where such individual's or corporation's or person's U.S. income tax liability is not satisfied by withholding of U.S. tax at source, see paragraph (b) of § 1.6012-1 of this chapter and paragraph (b) of § 1.6012-2 of this chapter.



EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53498, Oct. 14, 1997, § 514.31 was removed, effective Jan. 1, 1999.

### § 514.32 Effective date.

(a) *In general.* Except as provided in paragraph (b) of this section, the provisions of this Treasury decision shall be effective with respect to the rate of withholding tax, to amounts derived from sources within the United States on or after August 11, 1968, and with respect to all other taxes covered by the convention to amounts received in a taxable year of the recipient beginning after December 31, 1966.

(b) *Withholding of additional French tax.* The provisions of § 514.22 shall be effective with respect to income derived from sources within France on or after August 11, 1968.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53498, Oct. 14, 1997, § 514.32 was removed, effective Jan. 1, 1999.

## Subpart—General Income Tax

AUTHORITY: 53 Stat. 32, 467; 26 U.S.C. 62, 3791.

SOURCE: Treasury Decision 5499, 11 FR 2154, Mar. 2, 1946, as amended by T.D. 6273, 22 FR 9529, Nov. 28, 1957, unless otherwise noted. Redesignated at 25 FR 14022, Dec. 31, 1960.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53498, Oct. 14, 1997, Subpart—General Income Tax, consisting of §§ 514.101 through 514.117, was removed, effective Jan. 1, 1999.

REGULATIONS EFFECTIVE JAN. 1, 1945

### § 514.101 Introductory.

The tax convention and protocol between the United States and France (referred to in this subpart as the convention) proclaimed by the President of the United States on January 5, 1945, and effective January 1, 1945, provide in part as follows:

#### TITLE I—DOUBLE TAXATION

##### ARTICLE 1

The taxes referred to in this Convention are:

(a) In the case of the United States of America: The federal income taxes, including surtaxes and excess-profits taxes;

(b) In the case of France:

(1) The real estate tax;

(2) The industrial and commercial profits tax;

(3) The annual tax on undistributed profits;

(4) The agricultural profits tax;

(5) The tax on salaries, allowances and emoluments, wages, pensions and annuities;

(6) The professional profits tax;

(7) The tax on income from securities and movable capital;

(8) The general income tax.

##### ARTICLE 2

Income from real property, including income from agricultural undertakings, shall be taxable only in the State in which such real property is situated.

##### ARTICLE 3

An enterprise of one of the contracting States is not subject to taxation by the other contracting State in respect of its industrial and commercial profits except in respect of such profits allocable to its permanent establishment in the latter State.

No account shall be taken, in determining the tax in one of the contracting States, of the purchase of merchandise effected therein by an enterprise of the other State for the purpose of supplying establishments maintained by such enterprise in the latter State.

The competent authorities of the two contracting States may lay down rules by agreement for the apportionment of industrial and commercial profits.

The term "industrial and commercial profits" shall not include the following:

(a) Income from real property;

(b) Income from mortgages, from public funds, securities (including mortgage bonds), loans, deposits and current accounts;

(c) Dividends and other income from shares in a corporation;

(d) Rentals or royalties arising from leasing personal property or from any interest in such property, including rentals or royalties for the use of, or for the privilege of using, patents, copyrights, secret processes and formulae, good-will, trade marks, trade brands, franchises and other like property;

(e) Profit or loss from the sale or exchange of capital assets.

Subject to the provisions of this Convention the income referred to in paragraphs (a), (b), (c), (d) and (e) shall be taxed separately or together with industrial and commercial profits in accordance with the laws of the contracting States.

##### ARTICLE 4

American enterprises having permanent establishments in France are required to submit to the French fiscal administration the same declarations and the same justifications, with respect to such establishments, as French enterprises.

The French fiscal administration has the right, within the provisions of its national legislation and subject to the measures of

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appeal provided in such legislation, to make such corrections in the declaration of profits realized in France as may be necessary to show the exact amount of such profits.

The same principle applies *mutatis mutandis* to French enterprises having permanent establishments in the United States.

### ARTICLE 5

When an American enterprise, by reason of its participation in the management or capital of a French enterprise, makes or imposes on the latter, in their commercial or financial relations, conditions different from those which would be made with a third enterprise, any profits which should normally have appeared in the balance sheet of the French enterprise, but which have been in this manner, diverted to the American enterprise, are, subject to the measures of appeal applicable in the case of the tax on industrial and commercial profits, incorporated in the taxable profits of the French enterprise.

The same principle applies *mutatis mutandis*, in the event that profits are diverted from an American enterprise to a French enterprise.

### ARTICLE 6

Income derived by navigation enterprises of one of the contracting States from the operation of ships documented under the laws of that State shall continue to benefit in the other State by the reciprocal tax exemptions accorded by the exchange of notes of June 11 and July 8, 1927 between the United States of America and France.

Income which an enterprise of one of the contracting States derives from the operation of aircraft registered in that State shall be exempt from taxation in the other State.

### ARTICLE 7

Royalties from real property or in respect of the operation of mines, quarries or other natural resources shall be taxable only in the contracting State in which such property, mines, quarries or other natural resources are situated.

Royalties derived from within one of the contracting States by a resident or by a corporation or other entity of the other contracting State as consideration for the right to use copyrights, patents, secret processes and formulae, trademarks and other analogous rights shall be exempt from taxation in the former State, provided such resident, corporation or other entity does not have a permanent establishment there.

### ARTICLE 8

Wages, salaries and similar compensation and pensions paid by one of the contracting States or by a political subdivision thereof to individuals residing in the other State

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shall be exempt from taxation in the latter State.

Private pensions and life annuities derived from within one of the contracting States and paid to individuals residing in the other contracting State shall be exempt from taxation in the former State.

### ARTICLE 9

Income from labor or personal services shall be taxable only in the State in which the taxpayer carries on his personal activity.

This provision does not apply to the income referred to in Article 8.

### ARTICLE 10

Income from the exercise of a liberal profession shall be taxable only in the State in which the professional activity is exercised.

There is the exercise of a liberal profession in one of the two contracting States only when the professional activity has a fixed center in that country.

### ARTICLE 11

Gains derived in one of the contracting States from the sale or exchange of stocks, securities or commodities by a resident or a corporation or other entity of the other contracting State shall be exempt from taxation in the former State, provided such resident or corporation or other entity has no permanent establishment in the former State.

### ARTICLE 12

Students from one of the contracting States residing in the other contracting State exclusively for the purpose of study shall not be taxable by the latter State in respect of remittances received from within the former State for the purpose of their maintenance or studies.

### ARTICLE 13

In the calculation of taxes established in one of the contracting States on the use of property or increment of property of an enterprise of the other State, account shall be taken only of that portion of the capital situated or employed and allocable to a permanent establishment within the former State.

The foregoing provision shall apply to the French "patent" tax and the United States capital stock tax even though these two taxes have not been referred to in Article 1 of the present Convention.

In the application of the present Article navigation enterprises of one of the contracting States, enjoying in the other State the benefits of Article 6 of the present Convention, shall not be considered as having a permanent establishment in the latter State insofar as shipping activities are concerned.

## ARTICLE 14

It is agreed that double taxation shall be avoided in the following manner:

A. *As regards the United State of America.* Notwithstanding any other provision of this Convention, the United States of America in determining the income and excess-profits taxes, including all surtaxes, of its citizens, or residents, or corporations, may include in the basis upon which such taxes are imposed, all items of income taxable under the Revenue Laws of the United States of America, as though this Convention had not come into effect. The United States of America shall, however, deduct from the taxes thus computed the amount of French income tax paid. This deduction shall be made in accordance with the benefits and limitations of Section 131 of the United States Internal Revenue Code relating to credit for foreign taxes.

B. *As regards France—(a) Schedular taxes.* Income from securities, debts and trusts having its source in the United States of America shall be subject in France to the tax on income from securities; but this tax shall be reduced by the amount of the tax already paid in the United States of America on the same income. In consideration of the fiscal regime to which the legislation of the United States of America subjects the income of nonresident aliens and foreign corporations or other entities, the deduction of the tax paid in the United States of America shall be effected in a lump sum through a reduction of 12 in the rate of the tax established by the French law.

The income other than that indicated in the preceding paragraph shall not be subject to any schedular tax in France when, according to this Convention, it is taxable in the United States of America.

(b) *General tax on revenue.* Notwithstanding any other provision of the present Convention, the general income tax can be determined according to all the elements of taxable income as imposed by French fiscal legislation.

However, the provisions of the first paragraph of Article 114 of the French Code on direct taxation relative to the taxation of aliens domiciled or resident in France shall continue to be applied.

## ARTICLE 15

In derogation of Article 3 of the Decree of December 6, 1872, American corporations which maintain in France permanent establishments shall be liable to the tax on income from securities on three-fourths of the profits actually derived from such establishments, the industrial and commercial profits being determined in accordance with Articles 3 and 4 of this Convention.

The remaining one-fourth shall, in all cases, be taken as the basis of the annual tax

on undistributed profits applicable to the same corporations.

## ARTICLE 16

An American corporation shall not be subject to the obligations prescribed by Article 3 of the Decree of December 6, 1872, by reason of any participation in the management or in the capital of, or any other relations with, a French corporation. In such case, the tax on income from securities continues to be levied, in conformity with French legislation, on the dividends, interest and all other distributions made by the French enterprise; but it is moreover collectible, if the occasion arises, and subject to the measures of appeal applicable in the case of the tax on income from securities, with respect to the profits which the American corporation derives from the French corporation under the conditions prescribed in Article 5.

## ARTICLE 17

The American corporations subject to the provisions of Article 3 of the Decree of December 6, 1872 who were not placed under the special regime established by Articles 5 and 6 of the Convention for the avoidance of double income taxation between the United States of America and France, signed April 27, 1932, may, during a new period of six months from the date of the entry into force of the present Convention, exercise with reference to past years, the option provided in those two articles under the conditions which they prescribe.

Moreover, the American corporations contemplated in the third paragraph of Article 10 of the Convention of April 27, 1932, may be admitted to benefit from the provisions of that paragraph, when the tax has not yet been paid, if the latter was not found to be payable, prior to May 1, 1930, by a definitive judicial decision or if such decision has been the subject of an appeal in cassation.

## ARTICLE 18

Any United States income tax liability remaining unpaid as at the effective date of this Convention for years beginning prior to January 1, 1936 of any individual resident of France (other than a citizen of the United States of America) or of a French corporation may be adjusted by the Commissioner of Internal Revenue of the United States of America, on the basis of the provisions of the United States Revenue Act of 1936. However, no adjustment will be made more than two years subsequent to the effective date of this Convention unless the taxpayer files a request with the Commissioner of Internal Revenue prior to such date.

## ARTICLE 19

Notwithstanding any other provision of this Convention, in order to avoid double

taxation on public servants, employees of one of the contracting States being citizens of that State and remunerated by it, who have been received by the other State to perform services in such State shall be exempt in their principal place of residence from direct and personal taxes whether national, State or local.

Such employees who own real property in the State in which they perform services shall not benefit from the above exemptions with respect to the taxes levied on such real property. Employees who engage in any private gainful occupation in such State shall not be entitled to any exemption under this Article.

#### TITLE II—FISCAL ASSISTANCE

##### ARTICLE 20

With a view to the more effective imposition of the taxes to which the present Convention relates, the contracting States undertake, on condition of reciprocity, to furnish information of a fiscal nature which the authorities of each State concerned have at their disposal, or are in a position to obtain under their own laws, that may be of use to the authorities of the other State in the assessment of the said taxes.

Such information shall be exchanged between the competent authorities of the contracting States in the ordinary course or on request.

##### ARTICLE 21

In accordance with the preceding Article, the competent authorities of the United States of America will transmit to the competent authorities of France, as regards any person, corporation or other entity (other than a citizen, corporation or other entity of the United States of America) having an address in France and deriving from sources within the United States of America rents, dividends, interest, royalties, income from trusts, wages, salaries, pensions, annuities, or other fixed or determinable periodical income, the name and address of such person, corporation or other entity as well as the amount of such income.

The competent authorities of France will transmit to the competent authorities of the United States of America, as regards any person, corporation or other entity (other than a citizen, corporation or other entity of France) having an address in the United States of America and deriving from sources within France rents, dividends, interest, royalties, income from trusts, wages, salaries, pensions, annuities, or other fixed or determinable periodical income, the name and address of such person, corporation or other entity as well as the amount of such income.

The information relating to each year will be transmitted as soon as possible after December 31.

##### ARTICLE 22

The competent authorities of each of the contracting States shall be entitled to obtain, through diplomatic channels, from the competent authorities of the other contracting States, except with respect to citizens, corporations or other entities of the State to which application is made, particulars in concrete cases necessary for the establishment of the taxes to which the present Convention relates.

However, the competent authorities of each State shall not be prevented from transmitting to the competent authorities of the other State information relating to their own nationals (citizens, corporations or other entities) if they deem it opportune for the prevention of fiscal evasion.

##### ARTICLE 23

Each contracting State undertakes to lend assistance and support in the collection of the taxes to which the present Convention relates, together with interest, costs, and additions to the taxes and fines not being of a penal character according to the laws of the State requested, in the cases where the taxes are definitively due according to the laws of the State making the application.

In the case of an application for enforcement of taxes, revenue claims of each of the contracting States which have been finally determined shall be accepted for enforcement by the State to which application is made and collected in that State in accordance with the laws applicable to the enforcement and collection of its own taxes.

The application shall be accompanied by such documents as are required by the laws of the State making the application, to establish that the taxes have been finally determined.

If the revenue claim has not been finally determined, the State to which application is made may, at the request of the State making the application, take such measures of conservancy as are authorized by the laws of the former State for the enforcement of its own taxes.

The assistance provided for in this Article shall not be accorded with respect to the citizens, corporations or other entities of the State to which application is made.

##### ARTICLE 24

In no case shall the provisions of Article 22 relating to particulars in concrete cases, or of Article 23 relating to mutual assistance in the collection of taxes, be construed so as to impose upon either of the contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either contracting State, or to supply particulars which are not procurable under the law of the State to which

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application is made, or that of the State making application.

The State to which application is made for information or assistance shall comply as soon as possible with the request addressed to it. Nevertheless, such State may refuse to comply with the request for reasons of public policy or if compliance would involve violation of a business, industrial or trade secret. In such case it shall inform, as soon as possible, the State making the application.

### ARTICLE 25

Any taxpayer who shows proof that the action of the revenue authorities of the contracting States has resulted in double taxation in his case in respect of any of the taxes to which the present Convention relates, shall be entitled to lodge a claim with the State of which he is a citizen or, if the taxpayer is a corporation or other entity, with the State in which it is created or organized. Should the claim be upheld, the competent authority of such State may come to an agreement with the competent authority of the other State with a view to equitable avoidance of the double taxation in question.

### ARTICLE 26

The competent authorities of the two contracting States may prescribe regulations necessary to interpret and carry out the provisions of this Convention. With respect to the provisions of this Convention relating to exchange of information and mutual assistance in the collection of taxes, such authorities may, by common agreement, prescribe rules concerning matters of procedure, forms of application and replies thereto, rates of conversion of currencies, transfer of sums collected, minimum amounts subject to collection, payment of costs of collection, and related matters.

## TITLE III—GENERAL PROVISIONS

### ARTICLE 27

The present Convention shall be ratified, in the case of the United States of America by the President, by and with the advice and consent of the Senate, and in the case of France, by the President of the French Republic with the consent of the Parliament.

This Convention shall become effective on the first day of January following the exchange of the instruments of ratification.

The Convention shall remain in force for a period of five years and indefinitely thereafter but may be terminated by either contracting State at the end of the five-year period or at any time thereafter, provided six months' prior notice of termination has been given, the termination to become effective on the first day of January following the expiration of the six-month period.

Upon the coming into effect of this Convention, the Convention for the avoidance of double income taxation between the United States of America and France, signed April 27, 1932 shall terminate.

Done at Paris, in duplicate, in the English and French languages, this 25th day of July, 1939.

[SEAL]

WILLIAM C. BULLITT

[SEAL]

GEORGES BONNET

### PROTOCOL

At the moment of signing the present Convention for the avoidance of double taxation and the establishment of rules of reciprocal administrative assistance in the case of income and other taxes, the undersigned Plenipotentiaries have agreed that the following provisions shall form an integral part of the Convention:

I. The present Convention is concluded with reference to American and French law in force on the day of its signature.

Accordingly, if these laws are appreciably modified the competent authorities of the two States will consult together.

II. The income from real property referred to in Article 2 of the present Convention shall include profits from the sale or exchange of the said property, but shall not include interest on mortgages or obligations secured by the said property.

III. As used in this Convention:

(a) The term "permanent establishment" includes branches, mines and oil wells, plantations, factories, workshops, stores, purchasing and selling and other offices, agencies, warehouses, and other fixed places of business but does not include a subsidiary corporation.

When an enterprise of one of the contracting States carries on business in the other State through an employee or agent, established there, who has general authority to negotiate and conclude contracts or has a stock of merchandise from which he regularly fills orders which he receives, this enterprise shall be deemed to have a permanent establishment in the latter State. But the fact that an enterprise of one of the contracting States has business dealings in the other State through a bona fide commission agent or broker shall not be held to mean that such enterprise has a permanent establishment in the latter State.

Insurance enterprises shall be considered as having a permanent establishment in one of the States as soon as they receive premiums from or insure risks in the territory of that State.

(b) The term "enterprise" includes every form of undertaking whether carried on by an individual, partnership, corporation, or any other entity.

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(c) The term "enterprise of one of the contracting States" means, as the case may be, "United States enterprise" or "French enterprise".

(d) The term "United States enterprise" means an enterprise carried on in the United States of America by a resident of the United States of America or by a United States corporation or other entity.

The term "United States corporation or other entity" means a partnership, corporation or other entity created or organized in the United States of America or under the law of the United States of America or of any State or Territory of the United States of America.

(e) The term "French enterprise" is defined in the same manner, mutatis mutandis, as the term "United States enterprise".

IV. The term "life annuities" referred to in Article 8 of this Convention means a stated sum payable periodically at stated times during life, or during a specified number of years to the person who has paid the premiums or a gross sum for such an obligation.

V. Citizens and corporations or other entities of one of the contracting States within the other contracting State shall not be subjected as regards the taxes referred to in the present Convention, to the payment of higher taxes than are imposed upon the citizens or corporations or other entities of such latter State.

VI. The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit, allowance, or other advantage accorded by the laws of one of the contracting States in the determination of the tax imposed by such State.

VII. Documents and information contained therein, transmitted under the provisions of this Convention by one of the contracting States to the other contracting State shall not be published, revealed or disclosed to any person except to the extent permitted under the laws of the latter State with respect to similar documents or information.

VIII. As used in this Convention the terms "competent authority" or "competent authorities" means, in the case of the United States of America, the Secretary of the Treasury and in the case of France, the Minister of Finance.

IX. The term "United States of America" as used in this Convention in a geographic sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

X. The term "France", when used in a geographic sense, indicates continental France, exclusive of Algeria and the Colonies.

XI. Should any difficulty or doubt arise as to the interpretation or application of the present Convention, or its relationship to Conventions between one of the contracting States and any other State, the competent

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authorities of the contracting States may settle the question by mutual agreement.

Done in duplicate at Paris, this 25th day of July, 1939.

WILLIAM C. BULLITT  
GEORGES BONNET

**§ 514.102 Applicable provisions of the Internal Revenue Code.**

(a) The Internal Revenue Code provides in part as follows:

SEC. 22. GROSS INCOME. \* \* \*

(b) *Exclusions from gross income.* The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

\* \* \* \* \*

(7) Income exempt under treaty.—Income of any kind, to the extent required by any treaty obligation of the United States;

\* \* \* \* \*

SEC. 62. RULES AND REGULATIONS.

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter.

(b) Pursuant to section 62 of the Internal Revenue Code, Article 26 of the convention, and other provisions of the internal revenue laws, §§ 514.103–514.117 are hereby prescribed and all regulations inconsistent herewith are modified accordingly.

**§ 514.103 Scope of the convention.**

(a) The primary purposes of the convention are to avoid double taxation upon certain classes of income, and to inaugurate fiscal cooperation between the two States with respect to reciprocal disclosure of information and to the collection of the taxes enumerated in Article 1 of the convention.

(b) The specific classes of income from sources within the United States exempt under the convention from United States income taxes are:

(1) Industrial and commercial profits of a French enterprise having no permanent establishment in the United States (Article 3);

(2) Income derived by a French enterprise from the operation of ships documented under the laws of, or aircraft registered in, France (Article 6);

(3) Royalties derived by a non-resident alien who is a resident of

France or by a French corporation or other French entity (having no permanent establishment within the United States), for the right to use copyrights, patents, secret processes and formulae, trademarks and other analogous rights (Article 7);

(4) Compensation and pensions paid by France or by a political subdivision of France to individuals (other than citizens of the United States) for services rendered to France whether within or without the United States (Article 8);

(5) Private pensions and life annuities derived from within the United States and paid to nonresident alien individuals (whether or not such individuals are citizens of France) residing in France during the year in which such amounts are paid (Article 8);

(6) Earned income of a doctor, lawyer, engineer, or other member of a liberal profession who is a nonresident alien individual and is a resident of France and does not maintain within the United States an office, establishment, installation, or other fixed center related to the practice of his profession within the United States (Article 10);

(7) Gains from sources within the United States arising from the sale or exchange of stocks, securities, or commodities by a resident of France (other than a citizen of the United States) or a French corporation or other French entity unless such resident, corporation, or other entity has, at any time during the taxable year in which such sale takes place, a permanent establishment within the United States (Article 11).

(c) Except as expressly provided by the convention, the tax liability of nonresident aliens who are residents of France or of French corporations or other French entities is determined in accordance with the provisions of the laws and of the regulations thereunder applicable generally to nonresident alien individuals and to foreign corporations.

(d) The convention shall not be construed to affect the liability to United States income taxation of citizens of France who are resident in the United States except to the extent that such individuals are entitled to the benefits

of Articles 8, 14A, and 19 and to paragraph V of the protocol of the convention. The tax liability of a United States citizen or a resident of the United States, a member of a French partnership carrying on a French enterprise is not affected by Article 3 of the convention. Such citizen or resident is subject to United States income tax upon his distributive share of the net income of such partnership even though the other members of such partnership are not subject to tax upon their share of the partnership's industrial and commercial profits from sources within the United States where the enterprise has no permanent establishment within the United States. The convention shall not be construed to affect the liability to United States income taxation of citizens of the United States or residents of the United States who are not citizens of France.

(e) The convention has no reference to rates of taxation imposed by the respective States but is concerned with the exempting of income arising in one of the contracting States when such income is derived from sources within such contracting State by a resident or corporation or other entity of the other contracting State and meets the conditions upon which such exemption depends as prescribed in the convention. This subpart is not concerned with the provisions of Articles 14B, 15, 16, and 17 of the convention since such articles affect only the allowance against the taxes imposed by France of income and excess profits taxes paid to the United States or the application of French revenue laws and decrees.

#### § 514.104 Definitions.

(a) Any word or term used in this subpart which is defined in the convention shall be given the definition assigned to such word or term in such convention. Any word or term used in this subpart which is not defined in the convention but is defined in the Internal Revenue Code shall be given the definition contained therein.

(b) As used in this subpart:

(1) The term "permanent establishment" includes branches, mines and oil wells, plantations, factories, workshops, stores, purchasing and selling and other offices, agencies, warehouses

and other fixed places of business. A French parent corporation having a domestic or foreign subsidiary corporation in the United States shall not be deemed by reason of such fact to have a permanent establishment in the United States. The mere fact that a foreign subsidiary corporation of a French parent corporation has a permanent establishment in the United States does not mean that such French parent corporation has a permanent establishment in the United States. The fact that a French enterprise carries on business dealings in the United States through a bona fide commission agent or broker shall not be held to mean that such enterprise has a permanent establishment in the United States. If, however, a French enterprise carries on business in the United States through an employee or agent established there who has general authority to negotiate and conclude contracts or has a stock of merchandise from which he regularly fills orders, such enterprise shall be deemed to have a permanent establishment in the United States. Thus, if a French enterprise has a full time employee or full time agent who for such enterprise maintains in the United States a stock of merchandise from which orders are filled, such enterprise has a permanent establishment in the United States even though such employee or agent has no general authority to negotiate and conclude contracts on behalf of such enterprise. However, the mere fact that a commission agent or broker through whom a French enterprise carries on business in the United States maintains a small stock of goods in the United States from which occasional orders are filled shall not be construed as meaning that such enterprise has a permanent establishment in the United States. The mere fact that salesmen, employees of a French enterprise, promote the sale of its products in the United States does not mean that such enterprise has a permanent establishment therein. However, a French insurance enterprise which insures risks within the United States or receives premiums from sources within the United States is deemed to have a permanent establishment within the United States.

(2) The term “enterprise” means any commercial or industrial undertaking, whether conducted by an individual, partnership, corporation, or other entity. It includes such activities as manufacturing, merchandising, mining, banking, and insurance. It does not include the operation of, or the trading in, real property located in the United States. It does not include the rendition of personal services. Hence, a nonresident alien individual who is a resident of France, rendering personal services within the United States is not, merely by reason of such services, engaged in an enterprise within the meaning of the convention, and his liability to United States income tax is unaffected by Article 3 of the Convention.

(3) The term “French enterprise” means an enterprise carried on in France by a nonresident alien individual resident of France or by a French corporation or other French entity. The term “corporation or other entity” means a partnership, corporation, or other entity created or organized in France or under the laws of France. For example, an enterprise carried on wholly outside France by a French corporation is not a French enterprise within the meaning of the convention. Whether a French entity is a corporation, a partnership, or a trust is to be determined in accordance with the principles of existing law relating to the taxation of nonresident aliens and foreign corporations.

(4) The term “industrial and commercial profits” means the profits arising from the industrial, mercantile, manufacturing, or like activities of a French enterprise as defined in this section. Such term does not include income from real property, interest, dividends, rentals and royalties, gains from the sale or exchange of capital assets, or compensation for labor or personal service. Such enumerated items of income are not governed by the provisions of Article 3 but, to the extent covered by the convention, are subject to the rules elsewhere set forth therein and in this subpart.

(5) The term “Secretary” means the Secretary of the Treasury and the term “Minister” means the Minister of Finance of France.



**§ 514.105 Scope of convention with respect to determination of “industrial and commercial profits” of a nonresident alien individual resident of France, or of a French corporation or other entity carrying on a French enterprise in the United States.**

(a) *General.* Article 3 of the convention adopts the principle that an enterprise of one of the contracting States shall not be taxable in the other contracting State in respect of its industrial and commercial profits unless it has a permanent establishment in the latter State. Hence, a French enterprise is subject to United States tax upon its industrial and commercial profits from sources within the United States only if it has a permanent establishment within the United States. From the standpoint of Federal income taxation, the article has application only to a French enterprise and to the industrial and commercial income thereof from sources within the United States. It has no application, for example, to compensation for labor or personal services performed in the United States, to income derived from real property located in the United States or any interest therein, including rentals and royalties, to gains from the sale or other disposition of such real property or interest, to dividends and interest, to rentals and royalties arising from leasing personal property or any interest in such property, including rentals and royalties for the use of patents, copyrights, secret processes and formulae, good will, trade marks, trade brands, franchises, and other like property, or to profits from the sale or exchange of capital assets. Such enumerated items of income, to the extent covered by the convention, are treated separately elsewhere in this subpart and are subject to the rules laid down in the sections having specific references to the respective items of income.

(b) *No United States permanent establishment.* A nonresident alien individual who is a resident of France, or a French corporation or other French entity carrying on a French enterprise, but having no permanent establishment in the United States, is not subject to United States income tax upon industrial and commercial profits from

sources within the United States. For example, if such French corporation sells stock in trade, such as wines or perfumery or cheese, through a bona fide commission agent or broker in the United States, the resulting profit is, under the terms of Article 3 of the convention, exempt from United States income tax. Such French corporation, however, remains subject to tax upon all other items of income from sources within the United States which are not expressly exempted from such tax under the convention.

(c) *United States permanent establishment.* A nonresident alien individual who is a resident of France, or a French corporation or other entity, carrying on a French enterprise having a permanent establishment in the United States is subject to tax upon his or its industrial and commercial profits from sources within the United States. In the determination of the income of such resident of France or French corporation or other entity from sources within the United States, all industrial and commercial profits from such sources shall be deemed to be allocable to the permanent establishment within the United States. Hence, for example, if a French enterprise, having a permanent establishment in the United States, sells directly in the United States through a commission agent or broker therein goods produced in France, the resulting profits derived from United States sources from the latter transactions are allocable to such permanent establishment. The net income from sources within the United States, including the industrial and commercial profits, shall be determined in accordance with the provisions of section 119 of the Internal Revenue Code and the regulations thereunder. In determining industrial and commercial profits no account shall be taken of the mere purchase of merchandise effected in the United States by such French enterprise. A nonresident alien who is a resident of France, a member of a French partnership having a permanent establishment within the United States, shall by reason of such fact be deemed to have a permanent establishment within the United States.

**§ 514.106 Control of a domestic enterprise by a French enterprise.**

Article 5 of the convention provides that if a French enterprise by reason of its control of a domestic business imposes conditions different from those which would result from normal business relations between independent enterprises, the accounts between the enterprises will be adjusted so as to ascertain the true net income of the domestic enterprise. The purpose is to place the controlled domestic enterprise on a tax parity with an uncontrolled domestic enterprise by determining, according to the standard of an uncontrolled enterprise, the true net income from the property and business of the controlled enterprise. The convention contemplates that if the accounting records do not truly reflect the net income from the property and business of such domestic enterprise the Commissioner of Internal Revenue shall intervene and, by making such distributions, apportionments, or allocations as he may deem necessary of gross income or deductions of any item or element affecting net income as between such domestic enterprise and the French enterprise by which it is controlled or directed, determine the true net income of the domestic enterprise. The provisions of § 29.45-1 of Regulations 111 (26 CFR 1949 ed. Supps. 29.45-1) [and § 39.45-1 of Regulations 118 (26 CFR, Rev. 1953, Parts 1-79, and Supps.)], shall, in so far as applicable, be followed in the determination of the net income of the domestic business.

**§ 514.107 Income from operation of ships or aircraft.**

The income derived by a French enterprise from the operation of ships documented under the laws of France, or of aircraft registered in France, is under Article 6 of the convention exempt from United States income tax. However, the profits derived by such enterprise from the operation of ships or aircraft, if any, not so documented or registered are treated as are industrial and commercial profits generally. See Article 3 of the convention and § 514.105.

**§ 514.108 Income from real property, including mineral royalties.**

Income of whatever nature derived by a nonresident alien individual who is a resident of France, or by a French corporation or other French entity from real property situated in the United States, including gains derived from the sale of such property and royalties in respect of the operation of mines, quarries, or other natural resources situated in the United States, is not exempted from taxation by the convention. The treatment of such income for taxation purposes is governed by those provisions of the Internal Revenue Code applicable generally to the taxation of nonresident aliens and foreign corporations.

**§ 514.110 Government wages, salaries, and similar compensation, pensions, and life annuities.**

(a) Under Article 8 of the convention, wages, salaries, and similar compensation, and pensions paid by France, or by a political subdivision thereof, to individuals residing in the United States are exempt from Federal income tax. However, under the provisions of Article 14A of the convention, such exemption shall not be construed as applying to recipients of such income who are citizens of the United States or alien residents who are not citizens of France.

(b) Under the provisions of the same article of the convention private pensions and life annuities derived from sources within the United States by nonresident alien individuals who are residents of France are exempt from Federal income tax. Such items of income are therefore not subject to the withholding provisions of the Internal Revenue Code. See paragraph IV of the protocol to the convention as to what constitutes life annuities. See, also, § 514.109<sup>1</sup> with respect to patent and copyright royalties as to the requirements necessary to avoid withholding of the tax at the source, which requirements are also applicable for the purposes of this section.

<sup>1</sup>Section 514.109 (formerly § 7.418) was revoked by T.D. 6273, 22 F.R. 9529, Nov. 28, 1957.

**§ 514.111 Compensation for labor or personal services.**

(a) *General.* In general and subject to the provisions of Article 8 and Article 10 of the convention and paragraph (b) of this section, compensation for labor or personal services derived from sources within the United States by a nonresident alien who is a resident of France, is subject to tax in accordance with the provisions of the Internal Revenue Code applicable generally to nonresident aliens. The provisions of Article 9 do not disturb either the provisions of section 119(a)(3) of the Internal Revenue Code, relating to source of compensation for labor or personal services, or the provisions of the Internal Revenue Code relating to the taxation of such compensation in the hands of a nonresident individual who is a resident of France.

(b) *Professional earnings.* Article 10 of the convention provides a special rule of taxation with respect to professional fees constituting income derived from sources within the United States by a resident of France who is a nonresident alien. Under such rule, such nonresident alien rendering professional services, such as medical, legal, engineering, and scientific services, is not subject to United States tax with respect to such compensation unless he has an office or other fixed place situated in the United States during the taxable year. Thus, such alien present in the United States during any part of the taxable year and rendering professional advice as a medical doctor or as a lawyer or as an engineer, is not subject to Federal income tax on fees derived by him in such taxable year by reason of such services unless he maintains at some time during such taxable year an office or other fixed place in the United States incident to the practice of his profession. The exemption applies regardless of the length of time spent within the United States during the taxable year and regardless of the amount of the fees or professional charges resulting to such alien from such services. As to when an alien is regarded as a resident of the United States and hence outside the scope of the exemption, see § 29.211-2 of Regulations 111 (26 CFR 1949 ed. Supps. 29.211-2) [and § 39.211-2 of Regulations 118 (26

CFR, Rev. 1953, Parts 1-79, and Supps.)].

**§ 514.112 Stocks, securities, and commodities.**

Under Article 11 of the convention, gains derived from the sale or exchange within the United States of stocks, securities, or commodities (if of a kind customarily dealt in on an organized commodity exchange) by a nonresident alien individual resident in France, or by a French corporation or other French entity, is exempt from Federal income tax unless such individual, corporation, or other entity has a permanent establishment in the United States. If, however, a permanent establishment is maintained in the United States, such gains are not so exempt even though the sales or exchanges resulting in such gains were carried on directly from the home office of the taxpayer and not through the permanent establishment in the United States. As to what constitutes a permanent establishment, see § 514.104(b)(1).

**§ 514.113 Remittances to students.**

Under Article 12 of the convention, nonresident alien individuals who are residents of France and who are temporarily residing in the United States for the purposes of studying or for acquiring business experience, are exempt from Federal income tax upon amounts representing remittances from France for the purposes of their maintenance and studies.

**§ 514.114 Credit against United States tax liability for income tax paid to France.**

For the purpose of avoidance of double taxation, Article 14A of the convention provides that, on the part of the United States, there shall be allowed against the United States income and excess profits tax liabilities a credit for any income, war-profits or excess profits taxes paid to France by United States citizens or domestic corporations. Such principle also applies in the case of a citizen of France residing in the United States. Such credit, however, is subject to the limitations provided in section 131 of the Internal Revenue Code (relating to the credit for

foreign taxes) and section 729 of such Code (relating to laws applicable). See §§ 29.131-1 to 29.131-10 of Regulations 111 (26 CFR 1949 ed. Supps. 29.131-1 to 29.131-10), [§§ 39.131(a)-1 to 39.131(j)-1 of Regulations 118 (26 CFR, Rev. 1953, Parts 1-79, and Supps.)], and §§ 35.729-1 to 35.729-3 Regulations 112 (26 CFR 1938 ed. Supps. 35.729-1 to 35.729-3).

**§ 514.115 Adjustment of tax liability of residents of France and French corporations.**

Article 18 of the convention confers upon the Commissioner authority to adjust under the Revenue Act of 1936 the tax liability for taxable years beginning prior to January 1, 1936, of non-resident alien residents of France, and French corporations, in any case in which such tax liability remained unpaid on January 1, 1945. Such provision, however, will not apply in any case unless:

(a) The Commissioner is satisfied that the additional income tax involved did not arise by reason of fraud with intent to evade the tax on the part of the taxpayer concerned; and

(b) The taxpayer files, prior to January 1, 1947, with the Commissioner a sworn statement showing for each year involved and for such other years as the Commissioner may require, (1) by items and classes of income the amounts of interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical income, gains, profits, and income derived from sources within the United States; (2) the business transactions, if any, carried on in the United States by or in behalf of the taxpayer during each of such years; and (3) such further information as the Commissioner may require in the particular case.

**§ 514.116 Reciprocal administrative assistance.**

(a) *General.* (1) By Article 20 of the convention, the United States and France adopt the principle of exchange of information for use in the determination and assessment of the taxes with which the convention is concerned. Pursuant to such principle, every United States withholding agent

shall make and file with the collector, in duplicate, an information return on Form 1042C for the calendar year 1945 and each subsequent calendar year in addition to withholding return Form 1042, with respect to dividends, interest, royalties, rents, salaries, wages, pensions, and annuities, or other fixed or determinable annual or periodical income paid to persons whose addresses are in France whether or not tax has been withheld with respect to such income. There shall be reported on Form 1042C not only such items of income listed on Form 1042, but also such items of interest listed on monthly returns, Form 1012, and there shall be shown on such return items of income paid to such addressees even though such items are exempt from tax under the convention, as, for example, certain royalties.

(2) The information and correspondence relating to exchange of information may be transmitted direct by the Secretary to the Minister.

(b) *Information to be furnished in due course.* In accordance with the provisions of Article 21 of the convention, the Secretary shall forward to the Minister as soon as practicable after the close of the calendar year 1945 and of each calendar year thereafter during which the convention is in effect, the names and addresses of all persons whose addresses are within France and who derive from sources within the United States, dividends, interest, rents, royalties, salaries, wages, pensions, and annuities, or other fixed or determinable annual or periodical profits and income showing the amounts of such profits and income in the case of each addressee. For these purposes, the transmission to the Minister of information return, Form 1042C, as provided in paragraph (a) of this section for the calendar year 1945 and subsequent calendar years shall constitute a compliance with the provisions of Article 21 of the convention and of this subpart.

(c) *Information in specific cases.* Under the provisions of Article 22 of the convention, the Secretary shall furnish (if request therefor is made by the Minister through diplomatic channels) to the Minister such information, relative to the tax liability to France of any person (other than a citizen of the

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United States or a United States domestic corporation or other United States domestic entity), as is available to, or may be obtained by, the Secretary under the revenue laws of the United States.

### § 514.117 Reciprocal regulations.

Article 26 of the convention provides that the United States and France may prescribe (a) regulations for the purpose of carrying the convention into effect within the respective countries and (b) reciprocal rules relating to the exchange of information.

## PART 515 [RESERVED]

## PART 516—AUSTRIA

### Subpart—Withholding of Tax

Sec.

516.1 Introductory.

516.2 Dividends; general rules.

516.3 Dividends received by addressee not actual owner.

516.4 Interest.

516.5 Patent and copyright royalties and film rentals.

516.6 Private pensions and private life annuities.

516.7 Sources of income.

516.8 Beneficiaries of an estate or trust.

516.9 Release of excess tax withheld at source.

516.10 Refund of excess tax withheld during 1957.

516.11 Information to be furnished in ordinary course.

516.12 Taxable years beginning in 1956 and ending in 1957.

AUTHORITY: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805.

SOURCE: Treasury Decision 6322, 23 FR 7841, Oct. 10, 1958; 25 FR 14022, Dec. 31, 1960, unless otherwise noted.

EFFECTIVE DATE NOTE: By T.D. 8732, 62 FR 53498, Oct. 14, 1997, part 516 was removed, effective Jan. 1, 1999.

### Subpart—Withholding of Tax

#### § 516.1 Introductory.

(a) *Pertinent provisions.* The income tax convention between the United States and the Republic of Austria, signed on October 25, 1956, referred to in this part as the convention, provides in part as follows, effective on and after January 1, 1957:

#### ARTICLE I

(1) The taxes referred to in this Convention are:

(a) In the case of the United States of America: The federal income taxes, including surtaxes.

(b) In the case of the Republic of Austria: The Einkommensteuer (income tax), the Koerperschaftsteuer (corporation tax) and the Beitrag vom Einkommen zur Foerderung des Wohnbaues und fuer Zwecke des Familienlastenausgleiches (housing reconstruction and family allowance contribution).

(2) The present Convention shall also apply to any other income or profits tax of a substantially similar character which may be imposed by one of the contracting States after the date of signature of the present Convention.

#### ARTICLE II

(1) As used in this Convention:

(a) The term "United States" means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and Hawaii, and the District of Columbia;

(b) The term "Austria" means the Republic of Austria;

(c) The term "enterprise of one of the contracting States" means, as the case may be, a United States enterprise or an Austrian enterprise;

(d) The term "United States enterprise" means an industrial or commercial enterprise or undertaking carried on in the United States by a natural person (including an individual in his individual capacity or as a member of a partnership) resident in the United States or by a United States corporation or other entity; the term "United States corporation or other entity" means a corporation or other entity created or organized under the law of the United States or of any State or Territory of the United States;

(e) The term "Austrian enterprise" means an industrial or commercial enterprise or undertaking carried on in Austria by a natural person (including an individual in his individual capacity or as a member of a partnership) resident in Austria or by an Austrian corporation; the term "Austrian corporation" means a corporation or other entity created or organized under the law of Austria;

(f) The term "permanent establishment" means a branch, office, factory, workshop, a warehouse, a merchandising establishment, a mine, oil well or other place of exploitation of the ground or soil, a construction or assembly project or the like, the duration of which exceeds or will likely exceed twelve months, or other fixed place of business; but